

**FINAL REPORT AND RECOMMENDATIONS  
OF THE  
TASK FORCE  
TO REVIEW POLICIES PERTAINING TO RIGHTS,  
RESPONSIBILITIES AND BEHAVIOUR**

**OCTOBER 1994**



**Concordia**  
UNIVERSITY



# Concordia

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October 14, 1994

Task Force to Review Policies Pertaining to  
Rights, Responsibilities and Behaviour,

Room S-K110

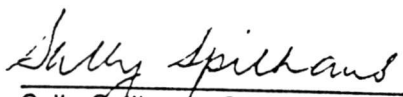
Me. Bérengère Gaudet, Secretary-General, and  
Dr. Charles Bertrand, Vice-Rector, Services  
Concordia University.

Dear Me. Gaudet and Dr. Bertrand,

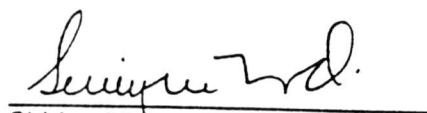
The members of the Task Force to Review Policies Pertaining to Rights, Responsibilities and Behaviour take pleasure in submitting to you their final report and recommendations, enclosed herewith. We remain at your disposal should you wish to meet with us for the purpose of clarifying any points we make or should you need our assistance in presenting the report in any university forum.

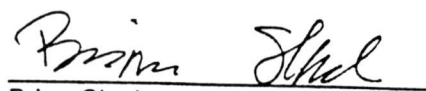
Yours truly,

The members of the Task Force to Review Policies Pertaining to Rights, Responsibilities and Behaviour

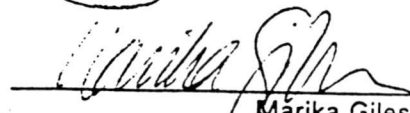
  
Sally Spilhaus, Chair

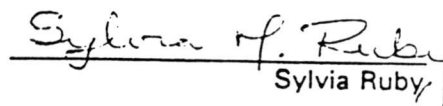
  
Brian Counihan

  
Shirley McLeod

  
Brian Slack

  
Suzanne Belson

  
Marika Giles

  
Sylvia Ruby



## EXECUTIVE SUMMARY

The Task Force to Review Policies Pertaining to Rights, Responsibilities and Behaviour reviewed the factors which have shaped the evolution of policies dealing with behaviour at Concordia, and considered the impact of recent events on the University's ability to manage misconduct on campus. It concluded that timely action is necessary to correct certain problems, and that such action should be informed by two basic principles. First, the task force recommends that managers can and should confront and deal with all forms of incivility, misconduct and disruptive behaviour and second, every effort must be made to enhance the use of alternate forms of conflict resolution in settling disputes between members of the University. With these principles in mind, the task force proposes changes to the structures and mechanisms used to manage misconduct, as follows.

### 1. Rationalizing policies

The task force recommends that the Sexual Harassment Policy and the Code of Conduct (Non-Academic) be replaced with a single Code of Rights and Responsibilities, in which all forms of discriminatory harassment should be given equal emphasis. The recommendation upholds Concordia's tradition of insisting that standards of conduct should apply equally to all members of the University.

### 2. Staffing

The task force recommends that the resources of the Sexual Harassment Office and the Code Office be consolidated to form a new Office of Rights and Responsibilities. This office should be staffed by a Director, an assistant and a secretary. The budget should be adequate for the funding of information and education programming.

### 3. Role of the Director

The Director of this new office should report to the Rector and should be responsible for the handling of complaints, planning and directing community education and training programmes, and coordinating the University response to disruptive behaviour. The emphasis is on expanding the use of alternate forms of conflict resolution. Further, the task force recommends that the Director prepares and carries forward for resolution all formal complaints filed at the Office.

### 4. Mechanisms for formal complaints

The task force recommends separate mechanisms for students and employees. It proposes abandoning the use of hearing boards to adjudicate complaints against staff and faculty, and returning this responsibility to management, emphasizing the pre-eminence of collective agreements. When complaints are filed against students, the task force recommends that they be adjudicated by a hearing board consisting of student jurors and chaired by a qualified member of the external community whose function it would be to ensure due process and to keep order.

5. The Ombuds Office

The task force recommends that the Ombuds Office retain its present mandate, but that it be governed by a separate policy. It recommends further that the Ombudspersons should report directly to the Board of Governors. The difference between the role of the Ombuds Office and the role of the Office of Rights and Responsibilities is clarified.

6. Advisory Committee

The task force recommends replacing the present Supervisory Board of the Code of Conduct and the Advisory Committee on Sexual Harassment with an Advisory Committee on Rights and Responsibilities. This committee's functions would be purely advisory in nature. Since it is recommended that the Ombuds Office be governed by a separate policy, this committee will have no connection with the Ombuds Office.

7. Mediation services

The task force recommends that the University develop in-house mediation services.

8. Disruptive behaviour

The task force recommends that the new Code should contain a definition of disruptive behaviour and incorporate a version of the Interim Policy on Temporary Suspension. The Office of Rights and Responsibilities should act as a resource, referral and coordination centre for managing disruptive behaviour on campus.

9. Information, education and training

The task force makes a number of recommendations with regard to informing the community about the provisions of the Code, educating the community with regard to rights and responsibilities and training managers and administrators in the management of problems relating to misconduct.

Task Force to Review Policies Pertaining to  
Rights, Responsibilities and Behaviour  
October 14, 1994

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# **PART I INTRODUCTION**

## **1.1. HISTORY AND MANDATE**

On October 28, 1993, the Secretary General, Me. Bérengère Gaudet, and the Vice-Rector, Services, Dr. Charles Bertrand, appointed the Task Force to Review Policies Pertaining to Rights, Responsibilities and Behaviour, with a mandate to bring order to the various policies and procedures which regulate conduct on campus (Appendix I). Various factors had highlighted the need for review. The departure of the Code Administrator, John Relton, had created a natural hiatus in the administration of the Code of Conduct (Non-Academic), providing an opportunity to review the functioning of the Code prior to appointing a permanent replacement. At the same time, the Advisory Committee on Sexual Harassment had recommended that the Sexual Harassment Policy was also due for review, and that the two policies should be scrutinised together. Those responsible for applying the policies had long since recognised that they were not always compatible with each other or with the collective agreements in force. The mandate of the task force therefore stressed in particular the importance of identifying "overlapping, duplication of efforts, dysfunctional areas and lacunae" and included an examination of the roles of the Code Administrator, the Sexual Harassment Officer and the Ombuds Office.

In addition to the review of existing policies, it was made clear in discussions with the Vice-Rector Services that the task force was also expected to make recommendations with regard to the University's ability to respond in situations where misconduct becomes disruptive, threatening or violent. The aftermath of the murders of August 1992 made the need for effective mechanisms for dealing with disruptive behaviour especially urgent.

## **1.2. MEMBERSHIP**

The members of the task force were chosen with a view to bringing a variety of expertise and perspectives to bear on the process of review. The members are:

Sally Spilhaus, Sexual Harassment Officer, Chair  
Suzanne Belson, Ombudsperson  
Brian Counihan, Dean of Students  
Marika Giles, President, CSU, undergraduate student  
Shirley McLeod, Assistant to the Dean of Fine Arts  
Sylvia Ruby, Associate Professor of Biology  
Brian Slack, Professor of Geography

Jean-François Plamondon, a graduate student who subsequently became president of the Graduate Students' Association, joined the task force as of November 8, 1993. Due to the pressures of his schedule, Mr. Plamondon resigned from the task force in early June, 1994. To compensate for his absence, an arrangement was made whereby the Graduate Students' Association would be invited to comment on the draft report of the task force. This was duly done.

## 1.3. METHOD

The task force structured its work according to the steps described below.

### 1.3.1. CONCEPTUAL FRAMEWORK

We developed a conceptual framework in order to facilitate the analysis of data in a consistent manner. The key concepts are listed below, together with some examples of the kinds of questions for which we sought answers:

**Substance:** Which rights, which responsibilities, what kinds of conduct? What are the University's statutory and contractual obligations with regard to employees, students? How to define and codify types of behaviour which merge with each other on a continuum?

**Mechanisms/procedures:** How will complaints and disputes be resolved? What is the role of the union? What is the relationship between policies and collective agreements? What is the role of management? Can/should policies and codes apply to both students and employees? Do we want/need internal tribunals?

**Structures:** Are there conflicting lines of authority? Are policy officers independent or marginalized? Is coordination possible across sectorial lines? Are the infra-structures cost-effective? Is there adequate provision for public education, advising, management training?

### 1.3.2. SCOPE OF THE INQUIRY (Appendix II)

The task force then proceeded to identify and make a preliminary study of the functioning of the policies, procedures and regulations which fell within its mandate. Chief among these were the Code of Conduct (Non-Academic), the Sexual Harassment Policy and the Interim Policy on Temporary Suspension. In addition we took note of the content of relevant sections of the Security Policy (C-SE-1), the Use of Space Policy (C-SR-1), the AIDS/HIV Policy (C-RE-3), the Emergency Procedures Manual, the collective agreements currently in force as well as staff discipline and grievance policies in the B Manual which are rapidly becoming obsolete.

We then examined the reporting structures of the various units implementing these policies, as well as the functions of responsible officers. This included an examination of the roles of different units which provide services or are called upon to intervene in various ways in situations involving problems of conduct. Me. Bram Freedman, University Legal Counsel, assisted the task force in this "discovery" phase, paying particular attention to the legal implications of a system in which policies and collective agreements co-exist imperfectly.

This skeletal snapshot was further fleshed out by consulting annual reports of the Sexual Harassment Office, the Code Administrator, available documentation on the work of the University Intervention Team, the 1991 report of the Multiculturalism Task Force, and in the spring of 1994, the report of the Task Force on Lesbian and Gay Life.



### **1.3.3. SUBMISSIONS FROM THE UNIVERSITY COMMUNITY (Appendices 3 & 4)**

The task force then put out a general call to the university community for oral and/or written submissions in early November 1993, via advertisements in the campus newspapers and a letter sent by general distribution. In addition, specific invitations to communicate with the task force were sent to senior administrators, directors of departments, faculty and staff unions and student associations, as well as the former Code Administrator and the members of the former University Intervention Team, and the Chair of the now-disbanded Task Force on Multiculturalism.

Most of the university members who responded to the invitation to submit information did so orally during the 12 meetings held by the task force between October 1993 and the end of January 1994. Eight presenters also submitted summary notes of their presentations. The tone of these meetings was generally informal, providing plenty of opportunity for discussing ideas, sharing experiences and asking questions. The discussions tended to focus more on what was not working well with the present arrangements, rather than what could be done to improve them.

Only three written submissions were received, in the form of brief memos from the Director of Libraries, the Assistant Director of Alumni Affairs and the Advisory Committee on Sexual Harassment.

Two members of the University commented in person to the Chair of the task force on what they considered to be unfortunate experiences they had had in trying to resolve disputes. In respect of their desire for anonymity, the Chair attempted to identify the principles of fairness which each felt had been abrogated in their respective cases, and to note them during deliberations.

### **1.3.4. RESEARCH (Appendix 5)**

The task force consulted numerous documents, including policies and codes in force at other universities, policy statements and research documents from CAUT, CREPUQ and the Ontario Ministry of Education, various articles and papers on academic freedom, natural justice and fairness, as well as a variety of materials on disruption and violence in the workplace.

### **1.3.5. TRAINING**

At the beginning of June 1994, the Chair attended the "Tribunal Training Program" offered by the Faculty of Law at the University of Western Ontario, which greatly enhanced her understanding of the basic principles which must inform the procedures for adjudicating conflict and misconduct cases in a university setting.

### **1.3.6. DEVELOPING A VISION FOR THE FUTURE**

Starting with an all-day "brainstorming" session and then working through weekly meetings throughout February and March 1994, the task force attempted to develop a vision of the kind of community we wanted to build and preserve and how this could be accomplished within a given framework of legal, structural and financial limitations. This approach of working from the general vision down to the specific structures and mechanisms which would be required to maintain it was adopted throughout the deliberations.

### **1.4. EXCHANGES WITH CONCURRENT TASK FORCES**

At about the same time that the task force began its work, three other committees began work on closely-related subjects, namely the Independent Committee on Academic and Scientific Integrity, (the "Arthurs Inquiry") the Administrative Review of the Fabrikant Case (the "Cowan Inquiry") and the Ethics Task Force (the "Bird Committee"). Given its strictly scientific and academic mandate, the task force did not consider it necessary to communicate with the Arthurs Inquiry, but it did have exchanges with the other two. The Chair had one lengthy interview with John Scott Cowan in order to clarify overlapping elements in the two mandates, while there were ongoing exchanges between the task force and the Bird Committee with a view to ensuring that the two committee's recommendations would be complementary and compatible.

### **1.5. INTERIM REPORT ON DISRUPTIVE BEHAVIOUR (Appendix 6)**

In November 1993, after an incident involving an alleged assault occurred on campus, the task force suggested to the Secretary-General and the Vice-Rector, Services that Concordia could not afford to delay adopting a procedure for handling urgent situations involving disruption, threat or violence, and recommended that it be authorized to develop interim guidelines which would apply pending the delivery of its final report. This was agreed to, and the resulting Interim Protocol was implemented at the beginning of 1994. The task force was also charged with monitoring the effectiveness of the protocol and recommending a permanent structure in its final report.

### **1.6. THE "COWAN REPORT"**

The task force continued to meet regularly during February and March of 1994 in order to consider the information that had been gathered, and to begin formulating recommendations. In early April, it was clear that the report could not be finalised by the deadline of April 30. The fact that the Cowan report had not yet been submitted was an important element in the delay: the task force was particularly concerned to have access to the document before making its final recommendations. An extension of the deadline was therefore sought and granted for October 1.

At the beginning of May, it became known that John Scott Cowan had submitted his report to the Board of Governors, but it was not released to the public until the beginning of June. At this point, the task force had already developed Part I of this report. Our subsequent examination of the Cowan report did not cause us to change anything of substance in our conclusions. We therefore restrict ourselves to the following comments.

The task force decided not to comment in detail on Dr. Cowan's analysis of Fabrikant's employment history. We believe, as do others, that it is flawed in its method. However, we find some of his general statements and conclusions about university management to be both useful and to confirm many of the points in our own general analysis.

We direct the reader particularly to part 1 of the report, entitled Overview and Context (pages 5 - 11). Dr. Cowan underlines the tendency of academic administrators to not fully understand their authority and to shy away from asserting it even when they do understand it. He exposes in a forthright manner the misuse of the concept of academic freedom to license unacceptable behaviour. He underlines the restraining effect that respect for individual rights and the threat of legal action has on the effectiveness of administrative action to curb inappropriate conduct. He supports the view held by both student groups and support staff at Concordia, namely that a class structure still exists which places professors in a relatively protected position. He describes how managers are prevented from exercising their authority because they lack pertinent information upon which to base decisions.

We also find Dr. Cowan's comments on the handling of disruptive behaviour to be particularly useful. Again, we direct the reader in particular to pages 30 to 31, in which he describes the importance of coordinated action across the university.

## **PART II**

# **THE EVOLUTION OF POLICIES ON RIGHTS AND RESPONSIBILITIES**

### **2.1. THE BACKGROUND**

In its short life, Concordia has been buffeted by change, both from within and without. It is not unique in this. All universities have felt the impact of social change, especially demographic change, over the past 30 years. Institutions whose structures and habits had traditionally reflected the values and dynamics of a homogeneous community, have had to confront the demands of pluralism. Age-old notions of authority and hierarchy have begun to give way to new ideas of democracy, equity and inclusion.

Change comes hard to the academy, whose long-standing traditions and assumptions sometimes give rise to an unthinking sense of entitlement to what are regarded by some as privileges. The demand for equity being expressed by women and minority groups who have hitherto been excluded from the academy, or who have been admitted as second class participants, is met with apprehension and hostility. The label of "political correctness", coined to describe excessive zeal in the struggle to achieve equity, is sometimes used to discredit demands for justifiable reform. The hardening of positions on all sides heightens tension and feeds mistrust, eroding the climate in which real academic freedom can flourish. Paradoxically, this most precious of freedoms in the university becomes a kind of weapon which various camps use to attack each other. In the desire to protect freedom of speech and to guard against the control of ideas, all sides in the debate do not always practice what they preach. Those seeking reform occasionally accuse those who resist change of using academic freedom as a licence to silence or disparage other views, or of masking boorish or harassing behaviour behind the traditional tolerance of eccentricity. The opposing view holds that the reformers are threatening the very freedoms they are supposedly trying to extend to all.

Concordia, the very new child of an arranged marriage, lacked from the outset the stability and reputation which other, older universities have counted on to help them absorb the shock waves of change. There are also other factors peculiar to Concordia which impede its ability to deal with change and to build a sense of community identity and cohesion. It is an urban, commuter school with a large number of older, part-time students whose sense of identity may be more firmly anchored in family and the working world than that of their studies. The university population is markedly heterogeneous and multicultural in nature, and many students come from backgrounds where they have had little exposure to university life and culture. By contrast, many older faculty members still identify with their roots in one of the founding institutions, and keep the old divisions alive even today. Scattered geography does nothing to heal these rifts. There is no real campus, and a dire lack of the kind of common meeting space which fosters community and encourages interaction between different constituencies.

Added to these factors has been the profound impact of two very serious events at Concordia - the so-called computer riots of 1969, and the murders of August 24, 1992. The riots forced the University to confront the implications of its increasingly multicultural population. Although Concordia has in some ways been a leader in Quebec in its promotion of human rights within the university, the view is expressed that sometimes the University's words have spoken louder than its deeds. The murders left a legacy of fear and mistrust which will probably take much longer to



abate than anyone might wish. One of the most frightening and regressive effects of this tragedy has been the way it has exacerbated a common but erroneous tendency to perceive all difficult behaviour as psychologically disturbed, and all "disturbed" behaviour as necessarily dangerous.

Furthermore, universities are entering an era plagued by two other closely inter-related phenomena, namely drastically shrinking economic resources and the increasing use of violence in human relations. There is growing evidence to show that universities will be receiving greater numbers of high school students who have learned to take the quick and violent route to getting what they want or to settling disputes.<sup>1</sup> As competition for dwindling resources and disagreement about spending reductions heighten frustration and tension on campus, there may be more frequent recourse to harassment, threats, disruption and violence.

In various ways, most of those who participated in discussions with the task force alluded to one or more of the observations made above. There was agreement on one point in particular, that the community as a whole is not dealing very successfully with the increasingly complex incidents of misconduct which occur on campus. Policies are felt to be confusing and ineffective. At all levels, those who have supervisory authority appear to lack the skills and training to deal with the problems of unacceptable behaviour or disruption which they encounter. They often do not recognise their authority and responsibility to intervene, or are reluctant to exercise it because they are uncertain whether they will be supported in their actions. The result is frequently that authorities procrastinate, or defer to others to resolve problems.

The task force believes that changes will have to be made in the way in which unacceptable conduct is handled. Concordia must promote the idea that uncivil behaviour, discriminatory behaviour and harassing or threatening behaviour undermine academic excellence as much as do academic fraud and malpractice. They are behaviours that are antithetical to professionalism, and as unacceptable in faculty and staff as they are in students. As a community, we cannot afford to give way to threats, disruption and violence. If we do not voluntarily change the way we do things, change will be thrust upon us, and we will have less freedom to decide on what is best for ourselves. This has already happened in Ontario, where recently released government guidelines for dealing with discrimination and harassment in universities have caused a storm of protest.

Concordia could be a leader in this area. The University has done some good things, on which it can build. This is a large community in which most people go about their business in a reasonable and decent way. Collectively, we can decide to deal with the few who are not reasonable and decent by accepting the particular responsibility of each member of the community, from the top down, to confront unacceptable conduct. This assumption of responsibility must be supported by our leadership, our policies and our structures. The task force believes that it can be done without threatening the freedom to teach, learn and work without fear or undue pressure. On the contrary, these freedoms cannot flourish in a climate where incivility, disrespect, disruption and threat become the common currency of our daily interactions.

## 2.2. AN OVERVIEW OF POLICY DEVELOPMENT AT CONCORDIA

The pressure of all these external changes and internal events has tended to produce a layered approach to policy development in universities across Canada. Concordia has been no exception. For example, the computer centre riots of 1969 prompted the development of the Code of Conduct (Non-Academic) and the Ombuds Office, while the murders of August 1992 gave rise to the Interim

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<sup>1</sup> See Valois, Robert F et al, *Adolescent risk behaviours and the potential for violence: a look at what's coming to campus*, College Health Vol 41, January 1993, pp. 141-147

Policy on Emergency Suspension. The policies on Employment Equity and Sexual Harassment, on the other hand, were a response to the demand for change articulated by the women's movement during the past 20 years. While the motivation behind this approach to policy development may be laudable, the end product is not always satisfactory. Policies are written, applied and reviewed in a piecemeal fashion, without paying sufficient attention to the overall impact on university relations and procedures. When this layering process occurs in an increasingly unionized environment, the contradictions are all the more apparent. Some general observations on the problems and contradictions follow.

#### **2.2.1.           RELATIONSHIP BETWEEN THE OMBUDS OFFICE AND THE CODE OF CONDUCT (NON-ACADEMIC)**

When the *Regulations relating to Rights and Responsibilities of Members of the University* were originally created at Sir George Williams University in the wake of the 1969 computer centre riot, the idea was that the Complaint Procedures and the Ombudsman Office would act as two sides of the same coin; the Complaint Procedures were intended to provide a mechanism for "formal" complaints and the Ombuds Office an avenue for "informal" grievances. Both offices nominally reported to the Principal but both were understood to function in an independent fashion. In 1978, the Sir George Williams' Complaint Procedures and its Ombuds Office mandate became the basis for a Concordia-wide operation reporting to the Rector, and the two offices continued their link in a new policy, the Code of Conduct (Non-Academic).

With the creation of the Secretary-General's office in 1988 the reporting structure changed; the then Code Administrator, principally because of her responsibility for the Legal Information Service, became responsible to the Secretary General, while the Ombuds Office continued to report to the Rector. Despite these structural changes, major revisions to the policy governing the two offices (a lengthy process ultimately completed in 1991) maintained the ties between them, a situation which appears to make little practical sense.

In 1994 the offices are no longer the two sides of the coin they may once have been. Moreover, the Ombuds Office should be, and should be seen to be separate from, and independent of, any other university structure. The two mandates need to be clarified with respect to each other, and the jurisdiction of the Code made more specific.

#### **2.2.2.           POLICIES MONOPOLISE THE STRATEGIC STAGE**

A serious, although unintentional and unforeseen, impact of specialised policies is their tendency to monopolise the strategic stage. They do so by undermining both the authority and the responsibility of management to ensure that things function smoothly and people treat each other decently. If there are special officers and procedures for dealing with misconduct, the unthinking assumption is not only that you do not, as manager, have to deal with misconduct yourself, but that in fact, you should not. This is particularly true with regard to discriminatory behaviour such as sexual harassment, which, distorted by media trivialization and sensationalism, becomes shrouded in such terror and mystery that managers feel obliged to leave it to the "experts". What is forgotten is that the conduct is not new, it is simply no longer acceptable. If changing mores are to be understood and applied, those with supervisory authority must take the lead, confronting misconduct when and where it happens and setting the example for what is acceptable. This responsibility belongs not only to administrative supervisors, but also to faculty, whether they are in the classroom or responsible for a department, laboratory or any other unit. Policies and

procedures and support services must be designed to ensure that they inform and support the exercise of management, not undermine it. If this is not clearly understood, the university will fail in both its statutory and its moral obligation to maintain an environment conducive to learning and productivity which is as free as possible of harassment, discrimination and disruption.

#### **2.2.3. PARALLEL DEVELOPMENT OF POLICIES, COLLECTIVE AGREEMENTS**

At Concordia, the policies dealing with misconduct have developed concurrently with employee unionization. Unfortunately, the process of development has been parallel, rather than integrated. The result is that policies are procedurally incompatible with each other as well as with collective agreements. Although unions have been represented on the committees responsible for writing and overseeing policies, the issues and procedures have never been ratified at the bargaining table. This has had the effect of seriously subverting the effectiveness of the policies.

#### **2.2.4. THE IMPACT OF UNIONIZATION**

The unionization of faculty, undoubtedly beneficial in many ways, has nevertheless introduced certain systemic tensions. Neither the union movement nor the university as employer has completely come to terms with the clash between the concept of collegiality and the adversarial approach to employer/employee relations inherent in unionization. When it comes to matters of conduct in the university, both management and union members may play one system off against the other, claiming the protection or pre-eminence of either depending on what appears to be expedient in a given situation.

At Concordia, unionization has succeeded to the extent that in 1994, almost all non-management employees are either members of unions or in the process of becoming so. Further, the large number of bargaining units sets up a serious logistical barrier to round-table consensus on any issues of university-wide import. The situation is made even more complicated by the fact that collective agreements for non-academic staff are negotiated quite separately from those of academic staff. This may make sense with regard to the nature of the work being performed by different groups, but makes it hard to reach consensus about managing conduct. Concordia has prided itself on its insistence in establishing standards of conduct which apply equally to all members of the university. Its mission statements and its policies on conduct all promote this principle. It has not, however, incorporated the principle into a coherent strategy at the bargaining table.

#### **2.2.5. STUDENTS FEEL DISADVANTAGED**

In their discussions with the task force, student representatives strongly expressed their view that the present system leaves them feeling vulnerable and ill-served. They believe that unionization only reinforces the protection which is already afforded by the status and authority of employees, especially when the employee is a tenured member of faculty. Thus, students who are either accused of misconduct by an employee, or who have themselves accused an employee of misconduct, feel themselves to be at a distinct disadvantage. They believe that the procedures of the Code of Conduct (Non-Academic) and the Sexual Harassment Policy have done little to level the playing field between students and employees, leaving students feeling cynical about the real institutional will to

tackle problems of misconduct, discrimination or mistreatment in a fair and effective way. It is perhaps ironic that policies which were supposed to give students equal treatment because they apply to all members of the university are considered to have failed by the very group they were supposed to protect.

#### **2.2.6. REVIEW PROCESS INADEQUATE**

Another characteristic problem with layered policies is that they do not keep pace with internal changes in culture and climate. This has been particularly true of the Code of Conduct (Non-Academic). Part of the problem lies in the slowness of university proceedings which are characterized by elaborate provisions for consultation and community participation and the inevitable inertia of a large bureaucracy. By the time a policy is finally approved, its provisions may already be partly out of date. Further, policy articles which looked good on paper turn out to be unworkable in practice. Yet there is resistance to changing something that took so long to approve in the first place. Sometimes the problem is simply that stated schedules for review are not respected, or the mechanisms are ineffective.

The broad observations noted above provided a framework for the task force's detailed analysis of our current policies, and helped us to identify deficiencies. In the following chapters, we recommend changes which we trust will remedy those deficiencies.



## PART III

# RATIONALIZING POLICIES

The task force focused its attention primarily on the Code of Conduct (Non-Academic) and the Sexual Harassment Policy. We came rapidly to the conclusion that it was necessary to merge these policies into a single code. We recommend this step fully anticipating the criticism that it will subvert the issue of sexual harassment and further undermine the position of women on campus. We believe that the reverse will occur, as we trust our recommendations will show. The task force is united in its support for equity at Concordia and believes that women and minority groups will be better protected if its recommendations are implemented.

The following section explains in some detail why we recommend merging the two policies, then makes specific recommendations as to how this should be accomplished.

### 3.1. SEXUAL HARASSMENT - THE LIMITATIONS OF A SINGLE-ISSUE POLICY

Prior to the adoption of the Sexual Harassment Policy, complaints of sexual harassment were dealt with under the Code of Conduct (Non-Academic). The decision to "add-on" a special policy was made, with the best of intentions, in response to the pressures of social change. The advantage of this approach is that it raises the profile of an issue which has not received widespread attention. One of the disadvantages, however, is that the development of the new policy is informed by prevailing ideological theories rather than an understanding of the specific culture of a given institutional milieu. After three years in operation, the policy has revealed the gap between theory and practice. A single issue policy of this kind has built-in limitations which do not always serve us well at Concordia.

As the Sexual Harassment Officer has pointed out, human behaviour does not come in discrete categories. The truth of this maxim is illustrated by the considerable variety of complaints and problems brought to the Office, less than half of which fit the definition of sexual harassment found in the policy (see Annual Reports of the Sexual Harassment Office for 1991/92 and 1992/93). The definition, which conforms to current legal standards, is not at fault. Rather, the narrow focus of the policy cannot address the needs of the community, whose women in particular experience various forms of hostility, intimidation, harassment and abuse, very little of which is explicitly sexual in nature. Reports are frequently made of behaviour which is disrespectful or offensive, and the women who complain feel at a "gut level" that they are targeted in this way because of their gender; but the behaviour they describe is not sexual harassment as defined in law and cannot be addressed through an individual complaint-based policy.

In other instances there may be some minor sexual innuendo, but the weight of the complaint lies in other elements such as intimidation or verbal abuse. To focus on the sexual aspects only would be to dilute or trivialize the case beyond recognition. Attempts have been made to accommodate such cases by advising complainants to file jointly under the Sexual Harassment Policy and the Code of Conduct (Non-Academic), but the process is cumbersome and the procedures confusing. The establishment of the Sexual Harassment Office has also caused confusion about who is responsible for dealing with other forms of harassment. The Task Force on Lesbian and Gay Life has pointed out that the definitions of the Code of Conduct (Non-Academic) and the Sexual Harassment Policy overlap and lack clarity, leaving gays and lesbians unsure about where to seek recourse if they are being harassed on the basis of their sexual orientation. Further, neither policy

deals specifically with harassment on other discriminatory grounds, such as race or ethnicity. Finally, no-one knows what to do about behaviour which is humiliating or demeaning but not "discriminatory" in that it is not based on some personal attribute such as sex or race. Staff unions are taking matters into their own hands by including harassment clauses in their collective agreements. Our policies should be keeping pace.

### **3.2. ACTION TO COMBAT DISCRIMINATION MUST BE EQUITABLE**

In a time of severe financial restraints, the provision of a separate policy and office to deal with sexual harassment may draw criticism, not because the issue does not deserve attention, but rather because of the implication that it is getting more attention than other forms of discriminatory harassment. Both the *Task Force on Lesbian and Gay Life* (1994) and the *Task Force on Multiculturalism* (1991) refer throughout their reports to the need for community education on discrimination and the support of minority rights<sup>2</sup>. Our policies must be equitable in all their provisions.

### **3.3. THE CODE OF CONDUCT (NON-ACADEMIC) AND THE SEXUAL HARASSMENT POLICY - STRUCTURAL OVERLAP**

The effectiveness of the Code of Conduct and the Sexual Harassment Policy is further hampered by the fact that there are two officers responsible for applying the policies, operating on different campuses and reporting to different senior administrators. The Code Administrator reports to the Secretary-General and the Sexual Harassment Officer reports to the Vice-Rector, Institutional Relations and Finance. We believe that officers responsible for the application of such policies have a university-wide function and their reporting structures should reflect this. Although there have been no reports of arbitrary intervention in their functions by line authorities, they should be protected structurally from the possibility of such interference.

### **3.4. PROCEDURES OF TWO POLICIES NOT COMPATIBLE**

The procedures of the two policies differ in many ways, some of which we believe to be significant. For example, the Code encourages the informal resolution of conflict by mandating the Code Administrator to intervene personally or to refer the matter to an appropriate authority (articles 44-48). The Sexual Harassment Officer has no comparable role in the resolution of problems, and may only advise complainants to use one of three formal procedures available to them in the policy. (see General Procedures of Sexual Harassment Policy). Further, there is a

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<sup>2</sup> see *Balancing the Equation: Cultural Diversity at Concordia*, report of the Task Force on Multiculturalism, September 1991, and Task Force on Lesbian and Gay Life, *Report to Concordia Council on Student Life*, March 1994.

discrepancy with regard to the standard of proof required. The Sexual Harassment Policy requires the American standard of "clear and convincing evidence" (article 36) while the Code of Conduct (Non-Academic) is silent on the matter. Finally, the two policies also differ dramatically with regard to the power to impose sanctions. In the Code, the Administrator, the appropriate authority and the hearing board all have the putative power to impose a variety of sanctions (article 67), while in the Sexual Harassment Policy, the hearing board may only recommend sanctions (article 45).

These discrepancies raise questions of fairness. Members of Concordia are entitled to consistent and fair treatment when complaints of unacceptable conduct are being resolved or adjudicated.

### **3.5. DISRUPTIVE BEHAVIOUR**

The task force is of the view that it is time that Concordia University addressed the question of disruptive behaviour at the policy level. We believe that this issue belongs in the proposed Code of Rights and Responsibilities, since it can be considered as an extreme form of the kind of misconduct already covered by this policy. The issue should be addressed directly, in the form of a statement about what constitutes disruptive behaviour. It should clarify the responsibility of those with supervisory authority, and should formalise the role of coordination as spelled out in the present protocol. We also recommend that the present Interim Policy on Temporary Suspension be retained in its essentials, and that it be adapted for inclusion in the new Code in the section on disruptive behaviour.

### **3.6. STANDARDS MUST APPLY TO ALL**

The task force supports Concordia's tradition of adopting standards of conduct that apply equally to all members of the university. We contend that if standards do not apply equally to all people at all times, they cannot be called standards. The values of respect and fairness are reciprocal and universal, and cannot be altered at whim nor used as a bargaining chip in labour negotiations. These values are further enshrined in both federal and provincial human rights legislation, thus imposing a statutory obligation upon the university to uphold and enforce basic standards of conduct. We believe that this can best be done through a single, broad-based policy. Nevertheless, for such a policy to be effective, it will have to be ratified at the bargaining table with all of Concordia's unions.

### RECOMMENDATIONS : PART III

1. That the Code of Conduct (Non-Academic) and the Sexual Harassment Policy be merged into a single policy to be known as the Code of Rights and Responsibilities, which sets broad standards of conduct applicable to all members of the University.
2. That the definition of proscribed behaviour in the new Code should be based on the statement of the existing Code of Conduct (Non-Academic) but that it be amended to include the following: harassment on the grounds of sex, sexual orientation and race or ethnicity, and behaviour which is disruptive, threatening or violent.
3. That the new Code should emphasise the responsibility of all members of the University to respect the rights of others and that it clearly spells out the right and duty of those in a position of supervisory authority to act effectively to uphold the desired standards of conduct.
4. That the university move systematically to ratify the new Code at the bargaining table with each of its unions. Ideally, ratification would be achieved by having the Code recognised in, or appended to, collective agreements.

## **PART IV STRUCTURES AND MECHANISMS**

### **4.1. A NEW MODEL**

The recommendations which follow have been formulated with a view to transforming this institution's approach to dealing with problems of conduct on campus. The model the task force proposes emphasises finding better ways to resolve conflicts at an earlier stage, and changing attitudes about behaviour, rather than looking for more sophisticated ways of codifying and punishing misconduct. Many universities have increasingly elaborate policies which still do not succeed in resolving conflict in a satisfactory way. Concordia should be seeking to build a more civil community, where there is broad consensus about the standards of conduct which are expected. The University needs clear rules which are understood by all, and must insist upon the duty of those in authority to apply the rules effectively.

The University should direct its energies and resources towards the prevention of misconduct, through informing and educating the members of the community on the expected standards of conduct. If few people know or understand Concordia's policies, the way people behave towards each other is unlikely to change. If new rules and practices are imposed to ensure greater equity, the ground must be prepared and community cooperation sought.

Unacceptable behaviour must be confronted when and where it happens. If disputes are allowed to fester, they will become intractable. If incivility or disruption are ignored in the hopes that they will just go away or because people are afraid to act, the belief that "anything goes" will be reinforced.

Too often in the past, the Code of Conduct (Non-Academic), the Sexual Harassment Policy and the services of the Ombuds Office have been used as a substitute for the exercise of authority. These offices too often find themselves dealing, by default, with problems that no-one else wants to deal with. The task force believes that managers can and should be open to listening to complaints about problems. They can and should talk to the parties involved and seek negotiated solutions. They can and should confirm these solutions in writing with the parties and monitor the situation for compliance. If they need help, they should seek and obtain it. Then, if the problem is not corrected, they can and should follow-up with tougher action, including if necessary, formal discipline.

It is also important to re-affirm here that instructors have the responsibility of maintaining order in the classroom. They can and should make clear their expectations of proper conduct, and assert their authority when it is not forthcoming. They should also be able to expect support from chairs, deans and colleagues.

The structures and mechanisms which we recommend in this section have been designed to serve this model. We trust that they will help Concordia to move away from the increasing tendency to adopt adversarial or litigious methods of conflict resolution, and that they will ensure that complaints are addressed fairly and in a consistent manner across the University.



## **4.2. MAJOR PROCEDURAL CHANGES REQUIRED**

All the evidence presented to the task force suggests that our procedures need to be changed in several important ways.

### **4.2.1. INCOMPATIBILITY OF POLICIES AND COLLECTIVE AGREEMENTS**

Both the Code of Conduct (Non-Academic) and the Sexual Harassment Policy policies give a complainant the option of taking the complaint to a hearing board, either directly or because a less formal procedure has failed to achieve resolution. These boards may recommend or impose sanctions, which may take the form of a disciplinary measure. The problem here is that under our collective agreements only management has the authority to discipline employees. This severely undermines the authority of a hearing board which hears a complaint against an employee: if a member of staff or faculty chooses to ignore a sanction, the hearing board cannot compel compliance. Further, in the case of CUFA members, a faculty member could be subjected to a further investigation of the same matter by the Vice-Rector Academic, who must follow this step as directed by the collective agreement, even if the hearing board has made a finding. Finally, to require unions to provide hearing board panellists from among their members is to ask them to appoint members to judge the actions of fellow-members, a practice with which CUFA, for one, has been extremely reluctant to comply.

For these reasons, the task force sees no alternative but to abandon the use of hearing boards in cases where the person complained against is a member of staff or faculty. We believe that management can and should decide these matters. Employees are protected against unfair action by management through the procedures for grievance and arbitration.

### **4.2.2. STANDARD OF PROOF**

We anticipate the objection that it is difficult to resolve cases in which there are two conflicting versions of the same incident, as is often the case. How many times has a dean declared that he or she is unable to resolve a situation because party A alleges wrongdoing, and party B denies it? The necessary evidence upon which to base a decision may indeed be lacking, in which case there is not much that can be done. The point here is that if there is insufficient information for a dean or a vice-rector to come to a decision, then there will also be insufficient information available to a hearing board.

However, if a manager has done a proper investigation, and that investigation leads to the conclusion that party A (or B) is telling the truth, then he or she has both the authority and the obligation to render a decision. The reluctance to decide these cases may arise out of a mistaken notion that a criminal standard of proof (i.e. beyond a reasonable doubt) is required. This is not so. The standard required for administrative procedures is the civil law standard, namely "the balance of probabilities". In other words, if the evidence is such that the adjudicator may say "I think it more probable than not that A (or B) is telling the truth", then a decision can be rendered.

#### **4.2.3. STUDENTS NEED DIFFERENT MECHANISMS**

The situation for students is different. They are not employees, and their associations do not provide the same protection as a union. The representatives of student associations who made submissions to the task force made it clear that they were dissatisfied with the present arrangements. They believe that employees enjoy greater power and protection than they do when disputes arise. The suggestion was also made that collegial relations between faculty and academic administrators may inhibit the latter's objectivity or willingness to act when there is a dispute between a student and a faculty member. Some students believe that the only way to "level the playing field" between students and employees is to allow students to be represented by legal counsel in adjudicatory procedures.

Given these differences in status, and the concerns of student representatives, the task force concluded that a different set of mechanisms is required for dealing with complaints made against students.

#### **4.2.4. "RE-VICTIMIZING" THE VICTIM**

Finally, the Code Administrator, the Sexual Harassment Officer and the Ombuds Office have all pointed out in their annual reports that so-called "complainant-led" policies may inadvertently subject complainants to a process which can be more painful than the original misconduct of which they were the target. This is particularly true in cases of harassment or sexual harassment.

Currently, the onus is on the complainant to pursue a complaint and to bear the burden of proof. In our opinion, if one member of the University is behaving unacceptably towards another, the onus should be on the University to remedy the situation. This is in keeping with the University's statutory obligation to maintain an environment which is as free as possible from all forms of discrimination and harassment. We should not expect someone who has already been subjected to unacceptable conduct to then bear the burden of carrying an action forward against the alleged wrongdoer. Of course, in order for action to be taken, the "complainant" must be willing to provide an accurate statement, to reveal his or her identity and to give testimony in a hearing or to an appropriate authority if required. But it should be the University who carries the case forward and bears the burden of proof. We have therefore proposed a fairly radical transformation of the role of the officer in charge of the Code in order to remedy this problem.

### **4.3. PROPOSAL FOR AN OFFICE OF RIGHTS AND RESPONSIBILITIES**

In thinking about the structures and mechanisms we wanted to recommend, the task force has tried to remedy the problems outlined above. We have also sought to steer the community away from adversarial or litigious modes of conflict resolution towards more constructive solutions, so that we can resolve problems in such a way that people can go on working with each other afterwards.



The task force recommends that an Office of Rights and Responsibilities, replacing the former Code Administrator's Office and Sexual Harassment Office, be established. It should be staffed by a Director, who reports to the Rector, together with a full-time assistant and a secretary. In keeping with our recommendation that this office should have a primary role to play in prevention and education, its budget should be adequate to support information and education programming.

#### **4.4. ROLE OF THE DIRECTOR, RIGHTS & RESPONSIBILITIES**

In developing our vision of the role of the Director, our goal has been to favour the use of alternate forms of conflict resolution, and to ensure as far as possible that formal procedures are used in a fair and consistent manner across the University.

##### **4.4.1. ROLE IS NOT "NEUTRAL"**

Currently, the roles of the Code Administrator and the Sexual Harassment Officer are burdened with the expectation that they be "neutral" because they are expected to give information and advice to both parties in a dispute. In practice, both the former Code Administrator and the Sexual Harassment Officer have noted that while they are obliged to be, and capable of being, fair, they could not be neutral. They are called upon to make an assessment of the complaint before them, and to advise accordingly. Although this is not explicitly recognised in the two policies, both officers must form at least a preliminary opinion of whether there is *prima facie* evidence of a case. The task force proposes to remove this ambiguity, by strengthening the new Director's authority to make decisions as to whether a complaint will be carried forward and what mechanism would best achieve resolution. This is not a neutral role, but is not an adjudicatory one either: that responsibility is placed elsewhere. The focus is on receiving the complaint, assessing it, and seeing it through to some kind of resolution. Other responsibilities, such as advising the person complained against, and administering the apparatus of adjudication, has been placed elsewhere, since these functions would be incompatible with the new orientation of the role.

##### **4.4.2. DIRECTOR SHOULD CARRY FORWARD COMPLAINTS**

Specifically, we recommend that the Director be given the discretion to advise those with problems on how best to resolve a situation; to intervene informally on behalf of the complainant if such assistance seems called for; to arrange for formally mediated settlements where appropriate, and to prepare formal complaints and carry them forward for adjudication, with the complainant's role being limited to that of witness. Although we do not want to draw too close an analogy here, this last aspect of the Director's functions is roughly equivalent to that of prosecutor. We recommend this approach because we believe that it is the best way to ensure consistency and fairness in presenting a complaint for resolution, and also because it relieves the complainant of the burden of proof and the risk of being "re-victimised". The Director is in a sense carrying the matter forward on behalf of the University, whose responsibility it is to correct misconduct when it is made aware of it. However, since the University cannot compel or subpoena a complainant to be a witness, the decision to proceed must take place with the agreement of the complainant,

who should be protected from every possibility of reprisal. This does raise the dilemma of what the University's responsibility may be if it is made aware of misconduct and the "witness" categorically refuses to put the case on record. If the conduct in question is not particularly serious, other informal means may be found to remedy the situation. We have no ready solution for serious situations, which will have to be examined on a case by case basis.

#### **4.4.3. AUTHORITY TO REFUSE A FORMAL COMPLAINT**

The task force recommends maintaining articles 32 and 33 of the present Code of Conduct (Non-Academic) which authorise the Code Administrator to refuse complaints not within the jurisdiction of the Code, or which are frivolous or made in bad faith. A reasoned refusal should be made in writing to the complainant. It should be noted that the Director's authority to accept or reject a complaint is an independent one which should not be subject to influence by any member of the University. We propose that refusals may be appealed to the Appeals Committee of the Board of Governors. (see section 4.8.4.) The appeal should be made in writing and forwarded to the Committee together with a copy of the Director's decision. The Appeals Committee may make a decision based on the written documents, or may in addition decide to hear verbal presentations by the complainant and the Director. The Appeals Committee decision is final.

#### **4.4.4. COORDINATING THE PROTOCOL ON DISRUPTIVE BEHAVIOUR**

We have recommended that disruptive behaviour be addressed at the policy level by including it in the new Code. We recommend further that the coordination of the Protocol on Disruptive Behaviour be given a permanent home. The task force concurs with the Rector's decision, taken in September 1994, to renew the Interim Protocol on Disruptive Behaviour until May 31, 1995. While the protocol has worked reasonably well since it was first implemented in February of this year, a longer testing period should yield a more fruitful analysis of its usefulness. The core team is accumulating information about a number of concerns, which range from procedural dilemmas to the question of how to prevent minor disruptions from escalating into serious problems. The task of analyzing this information and recommending changes will have to be located somewhere.

The task force recommends that the coordination of the protocol should be assumed by the Director, Rights and Responsibilities. The Director has a University-wide function, is independent of line authorities and should have knowledge and expertise on a wide range of issues and procedures relating to the management of misconduct. Further, the assistant to the Director may be trained to act as an alternate for the coordination function. At present, if the coordinator is unavailable, either the Director of Health Services or the Director of Security have to assume the coordination function, adding an unacceptable burden to their considerable workloads. It is also time-consuming and cumbersome for them to access the records maintained by the coordinator, and results in confidential material being kept in more than one office. If the entire function of coordination is maintained in one place, it will ensure greater effectiveness and confidentiality of action. It should also provide easier and more direct access to help for members of the community who report problems.

As a final note of warning, the task force cannot at this stage predict the volume of cases of any kind which will occupy the Office of Rights and Responsibilities once all the recommended changes are in effect. This will have to be closely monitored, and staffing adjusted if necessary.

## **4.5. RESOLVING PROBLEMS AND CONFLICTS**

In the experience of the Code Administrator, the Ombuds Office and the Sexual Harassment Officer, many "conduct" problems can be resolved informally. Very few situations are serious enough, or intractable enough, to warrant the use of formal mechanisms and the imposition of sanctions. Every effort should be made to encourage constructive solutions which allow people to correct their mistakes.

In the following sections we describe in some detail the role of the Director, Rights & Responsibilities in problem solving and resolving disputes. The authority for this role should be stipulated in the Code. The choice of informal mechanisms is available to all members of the University, students, staff and faculty alike.

### **4.5.1. ADVISING**

Ideally, the first reaction of any member of the University who encounters a problem of conduct on campus which they cannot resolve themselves, should be to go to the responsible person. Staff members should refer the matter to an immediate supervisor, and faculty should consult their department chair. Depending upon the problem, students may go directly to, for example, a department chair, or the director of any office or department serving students. If that fails, the person may consult the Director, Rights & Responsibilities. Alternatively, the person may choose to go directly to the Director either because they do not know where to go with their problem, or because the situation is such that an approach to the responsible person is rendered awkward or impossible.

Often, the person may simply be seeking advice. As is shown by the experience of the Sexual Harassment Officer and the Ombuds Office, people often seek the opportunity simply to talk about what is bothering them. Talking to a disinterested person who is outside the line authority structure can provide the perspective and courage which enables them to handle their own problems. This step is highly recommended as a useful way to resolve situations before they escalate and become intractable.

In the same way, instructors or administrators with supervisory authority may also seek advice on how to handle a given situation. Not everyone has developed skills in interpersonal problem solving. For example, not every faculty member who undertakes to chair a department can be expected to have all the skills necessary for human resource management. A discreet inquiry may yield valuable insights into constructive strategies for resolution, or referral for other expert help, as well as guidance on the principles of fair and open management action. Many managers are accustomed to seeking advice in this way, and they should continue to use the resources they trust. Those who do not should be encouraged to do so: seeking advice of this kind does not breach confidentiality; indeed, the names of the parties do not even have to be divulged.

#### **4.5.2. INFORMAL ASSISTANCE**

The task force believes strongly that the Director should also have the latitude to provide direct assistance in resolving some problems, without resorting to a "formal complaint". Sometimes people need help in order to make their point of view understood to another. Sometimes, there is misunderstanding, or a genuine ignorance that one's actions have offended someone else. This is particularly true when the actions or words are perceived as sexually motivated or seen as having a particular bias based on such attributes as gender, race or sexual orientation. Sometimes people respond better to the suggestion that they should change their behaviour if they are asked rather than threatened. This mode of "shuttle diplomacy" relies on discretion and persuasion, and is to be clearly differentiated from management action or the imposition of any form of sanction.

The assistance provided by the Director can take the form of helping to clarify perceptions, raising awareness of the impact of certain conduct or sorting out misunderstandings. As far as possible, the aim is to restore trust and goodwill. The parties may be brought together, or communication may be affected through the Director. It may not in every case be necessary to reveal the identity of the person who reports the problem if the intention is simply to raise awareness of the effects of certain words or actions. The Director should also follow-up the situation later with one or both parties. A phone call can ensure that things are on track, and that people feel supported in their attempts to sort out problems.

#### **4.5.3. FACILITATING FORMAL MEDIATION**

There are some kinds of conflicts, particularly those where the parties have to maintain an ongoing relationship, that lend themselves better to mediated settlements than to independent determinations of what's fair or who's right, such as characterize the adjudication of formal complaints. If mediated settlements are to be effective, the process must be structured and formalized and the outcome must be binding on both parties. The Director can help a complainant determine whether mediation should be tried and obtain the services of a suitable trained mediator (see following section.) When a complainant submits a request in writing, the Director will attempt to obtain the agreement of the other party to proceed to mediation, and if successful, will make the necessary arrangements. The task force recommends that formal mediation of this kind be separated from the Office of Rights and Responsibilities in order to avoid any conflict with the Director's responsibility to carry forward a future complaint arising from the same matter, in the event that the agreement is abrogated by either party.

It is important to clarify that mediated settlements are private, facilitated agreements between disputing parties, entered into voluntarily. Mediation cannot be imposed by management and a mediator has no authority to impose sanctions. The parties may be as imaginative as they wish in the form which their agreement takes, but one party may not ask for disciplinary action to be taken against the other. Mediation is not a management tool, nor is it a substitute for disciplinary action.

#### **4.6. DEVELOPING IN-HOUSE MEDIATION SERVICES**

As the foregoing suggests, Concordia will need to develop resources for mediation. The need has been frequently mentioned in recent years, and we believe that the time has come for action.

However, we wish to strike a note of caution, and dispel some of the myths surrounding the subject. First, mediation is not a panacea, and will not usually resolve protracted disputes where attitudes have hardened, nor is it applicable in all situations. Mediation is predicated on the assumption that the parties want an end to the dispute, and that they are prepared to work hard and perhaps accept compromises in order to achieve resolution. This is more difficult to obtain than would appear at first glance. Second, not just anyone can mediate: it is a specific skill, founded upon particular rules. Certainly, some people are good at helping others to resolve problems, and there is no objection to such resources being used in an informal fashion. But proper mediation requires training which has some cost attached.

This being said, the task force believes that the University would benefit by making skilled mediation more widely available to its members. Many universities have investigated this possibility, and the Ombuds Office is already aware of much of what is available. Further, the task force has gathered some documentation of mediation service proposals (eg: University of Toronto) or projects (eg. Carleton University). In other words, much work has been done, and we do not propose that Concordia laboriously re-invents the wheel in this respect. Since external mediation services are expensive, it makes sense to train in-house mediators. The task force therefore recommends that the University proceed immediately to determine this institution's particular needs for mediation and the ways and means required to set up in-house resources.

#### **4.7. THE OMBUDS OFFICE AND OFFICE OF RIGHTS AND RESPONSIBILITIES - CLARIFYING ROLES**

At this juncture, we feel it is useful to clarify the difference between the roles of the above two offices. The Ombuds Office is primarily concerned with complaints of unfair procedures and poor administrative practice in any and all activities of the University. The Office of Rights and Responsibilities, on the other hand, is concerned only with behaviour and inter-personal conflict which contravenes the standards set in the Code. In recent years, the Ombuds Office has become involved, by default and to an unwelcome degree, in issues that should properly be dealt with in other ways, at least in the first instance. The most obvious of these is the matter of disruptive behaviour, but personnel problems and other management issues are also on the list. If the recommendations of this report are implemented, the Ombuds Office's continued involvement in these matters should not be necessary.

The above having been said, allowance must be made for the fact that in matters of human behaviour, there are no clear boundaries and some overlap is bound to happen. The task force believes that the staff of both offices can be relied upon to assess the complaints brought before them, and to refer clients to each other when necessary.



## **4.8. MECHANISMS FOR HANDLING FORMAL COMPLAINTS**

Informal techniques such as we describe above are not always appropriate in every situation. They cannot perform miracles when there is intransigence or repeated misconduct, and they are not suitable for dealing with allegations of serious misconduct. When normal administrative channels have been exhausted or when informal intervention has not succeeded in resolving a situation, or when allegations are serious, recourse to formal procedures may have to be considered. It is at this point that we separate the mechanisms to be used for students from those appropriate for staff and faculty.

## **4.9. HEARING FORMAL COMPLAINTS AGAINST STUDENTS**

Our objective in recommending the following structures was to create a mechanism that would allow students to take more responsibility for regulating their own conduct. To this end, we propose the use of hearing boards composed of student members to adjudicate complaints against students. Our primary concern has been to design a process which is as fair as possible, and to make every reasonable effort to ensure that students who have had complaints filed against them receive the support and advice necessary to prepare and present their cases. We are particularly concerned that students who may lack experience and have difficulty in articulating their case are helped. We would like to re-iterate at the outset the principle that these structures do not in any way limit a student's right of recourse through the courts or the Human Rights Commission, nor do they preclude any student from seeking advice from any quarter.

The above having been said, we propose the following structures and process for the hearing of formal complaints against students. The model is based on the present Code of Conduct (Non-Academic), but with several important modifications.

### **4.9.1. RECOMMENDED STRUCTURE FOR HEARING BOARDS**

Since it is the Director, Rights and Responsibilities who carries forward the complaint, the hearing boards should be established and called elsewhere. We propose that a suitable authority for this task is the Office of the Secretary-General. The recommended structures are:

1. The Board Secretary: The Secretary-General will appoint a member of her/his office as the permanent secretary of the student hearing board. The secretary is responsible for ensuring that the mechanics of the hearing board are in place and function smoothly. The secretary also maintains the confidential files and transcripts of the hearing board.

2. Selection committee: A permanent selection committee will be struck, composed of the secretary of the hearing board, the Dean of Students, and a representative from each of the recognised student associations. Committee files will be maintained by the secretary of the hearing board. The purpose of the committee will be to recruit, screen and appoint hearing board chairs and panellists. Recruiting of student panellists should be affected through open advertising in campus newspapers.
3. Chair of board: The role of the chair of the hearing board is to direct the proceedings, keep order and ensure fairness (i.e. respect for the rules of natural justice). The chair will preside over the deliberations of the panellists but will not vote. This will help to ensure consistency from one hearing to another, but allows for student panellists to make their own decisions.

This role is the key to ensuring the effectiveness of hearing boards. It requires impartiality and particular skills which take time to develop and cannot easily be acquired by lay persons during a brief term of office. For these reasons, the task force recommends that candidates for the positions of chair and alternate(s) be sought from among qualified alumnae or emeritii. Appropriate qualifications would include knowledge of the University environment and training in law or tribunal procedures.

4. Panellists: The secretary of the hearing board will maintain a pool of a minimum of 10 student (undergraduate and graduate) panellists, any three of whom will sit at a given hearing. Appointments will be made for a two-year term, which may be renewed. Every effort should be made to stagger appointments to ensure continuity of experience.
5. Training: The panellists will receive rigorous training, prepared and conducted jointly by the Director, Rights and Responsibilities, the Director of Advocacy and Support Services and Legal Counsel. Training will be conducted annually and will include the participation of panellists and chairs who are still serving their term, since they will have valuable insights to offer newcomers.

#### 4.9.2. RECOMMENDED MINIMUM PRINCIPLES FOR COMPLAINT PROCEDURES

1. Delays: All of the following steps must be completed within fixed delays which will have to be specified.
2. Filing complaints: Complaints must be made in writing and delivered to the Director, Rights and Responsibilities. The Director, as previously described, makes a decision to accept or reject the complaint.
3. Informing the respondent: If the complaint is accepted, the Director notifies the student against whom the complaint has been made. The student should receive a copy of the complaint together with clear information about the hearing procedures and how to obtain advice on preparing his/her case and representation before the hearing board. Advocacy and Support Services are well placed to provide this service. They provide student advocates, who give non-judgemental, confidential support, and who are knowledgeable about university procedures and trained and supervised by legal counsel. However, students should also have the option of



seeking advice on the preparation of their case from anyone else they choose, and should be able to have any member of the University community represent them before a hearing board.

4. Option to settle: The student may study the complaint and decide either to opt for settlement or proceed to a hearing. If there is agreement between both parties to attempt a settlement, they should negotiate with the assistance of the Director, Rights and Responsibilities and the respondent's advisor. If either party abrogates the conditions of settlement they then have the choice of taking further action.
5. Disclosure: In the case of a decision to go to a hearing, the Director notifies the secretary of the hearing board, who calls the hearing. The Director then prepares the case, together with the complainant, and delivers the documents to the board secretary. This should include the written complaint, any supporting documents, and an indication of the number and nature of witnesses, if any, to be called. The secretary forwards the case file together with a list of the proposed hearing panellists, to the student respondent. The student respondent is thus able to build his or her case based on the information provided.
6. Perception of bias: The student may object to the selection of any panellist or the chair on the grounds of bias. A reasoned objection should be filed with the secretary of the board, who will then appoint an alternate panellist or chair. If the secretary feels that the objection is frivolous, and the matter cannot be resolved, it may be put before the Appeals Committee of the Board for a decision.

#### 4.9.3. RECOMMENDED PRINCIPLES FOR HEARING BOARD PROCEDURES

1. Rules of procedure: The hearing should follow the normal rules of procedure, including opening statements, presentation of evidence, cross-examination, questioning by the panellists, and closing statements.
2. Deliberations and findings: The deliberations of the panellists will be presided over by the chair, in order to ensure proper procedure. The board will give reasoned, dated decisions, citing the applicable articles of the Code which have been contravened. The task force wishes to stress the importance of adequate reasoning, which should be founded on the "balance of probabilities" standard of proof. All parties must be informed in writing of the decision.
3. Records: The secretary, who is present at all hearings, maintains a taped transcript of proceedings which is made available to the panellists during their deliberations and subsequently becomes the record of the case, together with the documents.
4. Closed hearings: We propose retaining article 56 of the present Code, which states that hearings will be closed unless the parties request otherwise. The parties should be made aware of this clause and asked for their wishes in this regard.
5. Sanctions: We propose that the hearing board should have the authority to impose any of the sanctions listed in the present Code of Conduct (Non-Academic), with the exception of suspension or expulsion, for which, as is now the case, a recommendation must be made to the Rector.

The hearing board may invite the victim of any misconduct to make representations as to appropriate remedies or sanctions, and the student against whom the complaint is made has the right to respond.

In the view of the task force, the primary purpose of sanctions and remedies should be to educate the parties and to ensure that misconduct is not repeated. It therefore suggests that the list of sanctions in article 67 of the present Code of Conduct (Non-Academic) should be expanded to include carefully selected community service or attendance at seminars or workshops which are related to the substance of the complaint.

Further, we recommend that the payment of damages (article 67 [d]) be limited to compensation for property damage. There should be adequate delays specified for the payment of any fines or compensation, after which the outstanding amount should be added to the student's account.

The administration of the sanctions should be undertaken by the Office of Rights and Responsibilities. If there is failure to comply, the Director will refer the matter to a hearing board for the determination of further sanctions.

#### **4.9.4. APPEALS**

We propose that either party may appeal a decision or sanction of a hearing board to the Appeals Committee of the Board of Governors, as is currently the practice in the Code of Conduct (Non-Academic) (articles 70-75). Only appeals based on the production of new evidence should be returned to a new hearing.

All appeal decisions should be fully reasoned.

### **4.10. COMPLAINTS AGAINST FACULTY AND STAFF MEMBERS**

#### **4.10.1. USING NORMAL ADMINISTRATIVE CHANNELS**

If any member of the University wishes to complain about the conduct of a member of staff or faculty, the normal recourse is to seek the intervention of the appropriate manager. A simple enough principle, but in a large and complex institution, it is not always easy to know where to go. The channel to pursue will vary depending upon whether the complainant and/or the person complained about is a member of staff or faculty, or a student. It will vary further depending upon whether or not an employee is temporary, part-time or full-time or belongs to a union.

If we are to uphold the principle that management must act when employees behave badly, we need to ensure that those complaining of misconduct know where to go to seek recourse, that the process is fair, and that management feels that it has the necessary support and expertise to make decisions. The following steps are designed to serve these aims and to make the new Code function in a manner which is complementary to collective

agreements, rather than, as is now the case, separate and parallel to them. The task force wishes to stress that these procedures do not in any way supersede those of the collective agreements in force, which always apply in any situation involving a unionised employee.

#### **4.10.2. SEEKING THE ASSISTANCE OF THE DIRECTOR, RIGHTS & RESPONSIBILITIES**

Whether or not a member of the University seeks the assistance of the Director, Rights and Responsibilities to file a formal complaint against someone would be a matter of choice. The choice will depend on who is complaining against whom, whether or not either party is a member of a union, and even the nature of the complaint. There are, however, many potential advantages in choosing this route. The Director will have knowledge and expertise in the area of rights and responsibilities, including the various forms of discriminatory harassment, and will explain the jurisdiction of the Code. The Director will be able to identify the right authority to approach, give procedural advice and help the complainant decide upon a course of action. If and when the decision is made to proceed with a formal complaint, the Director will prepare the case file, in consultation with the complainant, and carry the case forward for adjudication on behalf of the complainant. The complainant is thus advised and supported throughout the process.

#### **4.10.3. RECOMMENDED PROCESS**

Once the decision to file a complaint has been reached as described in preceding sections, the complainant submits a written and signed complaint to the Director, Rights & Responsibilities. The Director then prepares a case file, including the complaint, any supporting documents and a list of the nature and number of any witnesses. This file is presented to the responsible authority who will take the necessary steps to inform the person complained against, hear the cases of both parties, investigate the matter thoroughly, make a decision and impose remedies or sanctions, which may include disciplinary measures. In every case involving a unionised respondent, the authority follows the procedures and delays specified in the collective agreement.

It is the responsibility of the Director, Rights & Responsibilities to present the case of the complainant, including introducing evidence, making supporting arguments, and where appropriate, requesting a particular remedy desired by the complainant. The complainant may be asked to give testimony in person, but will always be accompanied by the Director. The burden of proof rests with the Director.

#### **4.10.4. FAIRNESS AND CONSISTENCY**

One of the task force's main concerns has been to think about how the University can ensure that complaints of this kind are dealt with in a manner that is both fair and consistent across the University. Although there is much talk about "due process", not everyone fully understands the principles of natural justice, or how to conduct a fair investigation, or how to make a reasoned decision, or even how to maintain proper records of cases. Further, there is still ignorance of the content and proper application of collective agreements. And finally, even the detailed procedures provided in the CUFA agreement are not in themselves enough to ensure fairness if the underlying principles are not well understood.

We believe that if the majority of complaints are brought forward by the Director, Rights and Responsibilities, this will help over time to standardise the procedures used to hear and settle complaints. But it will not be enough, and in the section on training which follows, we have tried to identify what is needed. Suffice it to say at this stage that we recommend, as a component of management training, the development of a manual on fair procedure, which would explain the basic principles involved, advise on record keeping, and provide systematic guidance for managers, whether or not they are applying a collective agreement.

#### **4.10.5. LIMITED DELAYS**

The task force recommends that the new Code set out limited delays for the processing of a complaint in cases where the respondent is not a member of a union.

#### **4.10.6. INFORMING THE COMPLAINANT OF THE OUTCOME**

In the opinion of the task force, justice requires that the complainant be informed as to the disposition of the case, and the reasons for it. The complainant need not be furnished with copies of confidential documents relating to discipline, but the general substance of the decision and action should be communicated. The Director, Rights and Responsibilities should similarly be informed in cases where he or she has been instrumental in carrying the complaint forward.

#### **4.10.7. MONITORING COMPLIANCE TO NON-DISCIPLINARY REMEDIES OR SANCTIONS**

If the sanction or remedy is not discipline as defined by the collective agreement, the authority should monitor compliance by the respondent. Once satisfied that compliance has been affected, the authority should inform the both the complainant and the Director, Rights & Responsibilities to this effect. The Director may request information on compliance from the authority if there appears to be undue delay. If compliance does not occur, the complainant and the Director must be informed, and will be invited to make representations as to any further action that may be taken.

#### **4.10.8. OVERTURNING OF MANAGEMENT DECISIONS**

If a management decision to uphold a complaint against a staff or a faculty member is overturned through grievance or arbitration procedures, the task force strongly recommends that in this instance too, the original complainant should be informed of this outcome. The same principle should also be applied if a non-unionised employee contests a management decision by taking it to the next authority in line, and the decision is overturned. The Director, Rights and Responsibilities should similarly be informed in cases where he or she has been instrumental in carrying the complaint forward.

**4.10.9. COMPLAINTS FILED BY MEMBERS OF UNIONS WHOSE COLLECTIVE AGREEMENTS CONTAIN CLAUSES ON HARASSMENT AND SEXUAL HARASSMENT.**

Members of such unions, notably CUSSU, have the option of using either grievance procedures or the special procedures laid down in their agreements to resolve any complaints. However, there is nothing to prevent such union members from using the informal advice and conflict resolution services provided by the Office on Rights & Responsibilities.

**4.11. ADVISORY COMMITTEE ON RIGHTS AND RESPONSIBILITIES**

Testimony from the former Code Administrator, the Sexual Harassment Officer and the Ombudspersons indicates that supervisory/advisory boards have been less than comfortable with their roles, a fact which is not surprising given that the members are unlikely to have specialised knowledge of the practices of these offices. Committees which are set up to provide constituent groups with the opportunity of keeping a "weather eye" on the activities of these offices often fail in this purpose because much of the work of the offices is confidential and because they have to rely on the specialized knowledge of the officers themselves. This places an additional burden on officers, who have to "educate" committee members. Then, just when members are becoming more effective, their mandates end and the process starts over again.

For these reasons, we propose several changes. Since we recommend that the Ombuds Office be governed by a separate policy (see Part V of this report), we eliminate at the outset one major function of the present Code of Conduct Supervisory Board. Similarly, the Advisory Committee on Sexual Harassment is eliminated with the merging of the two policies. On the grounds that the "supervisory" role could be performed more effectively by those with the appropriate expertise, we propose eliminating this function of the present Supervisory Board. We have transferred to the Appeals Committee of the Board of Governors the present function of hearing appeals of the Code Administrator's refusal of a complaint, thus keeping all the appeals processes associated with the new Code in one place. The function of investigating any complaint of improper procedures by the Office of Rights and Responsibilities should be left up to the Rector, to whom the Director reports, and if still not resolved, to the Ombuds Office as a last resort. Any complaint of negligent performance by the Director would have to be addressed by the Rector.

What remains is the function of community input into the day-to-day activities of the Office. Ideally, this should provide constituent groups with the opportunity of developing educational strategies and of discussing any conduct issues which seem to be of particular concern to their constituency. There is also a need for support and a sounding board for the Director, Rights and Responsibilities. Finally, a representative committee should have the opportunity to put forward its comments on the annual report of the Office and to make any recommendation it sees fit.

We therefore recommend that an Advisory Committee on Rights and Responsibilities should be struck, the composition of which should remain as presently stated in article 79, Code of Conduct (Non-Academic) with one exception, namely that faculty should be represented by one full-time and one part-time representative. We recommend further that it would be useful to add Legal Counsel in an ex-officio, non-voting capacity, in that the ongoing advice and comments of Counsel on procedural matters and legal interpretations will be useful both to the Director, Rights and Responsibilities, and the members of the committee. The committee will act as an advisory body

only. If cases are discussed, the committee should not have access to nominative information. The committee should hold a minimum of two meetings per academic year, during which it will receive an oral update of activities from the Director.

The committee will also receive and review the Annual report of the Director, Rights and Responsibilities, and forward it to the Rector with its recommendations. It should also monitor the implementation of any recommendations and make representations to the Rector or the Board of Governors (depending on the matter) if it is aware of delays.

#### **4.12. ANNUAL REPORT OF OFFICE OF RIGHTS AND RESPONSIBILITIES**

By September each year, the Director will submit simultaneously to the Rector and the Advisory Committee an annual report of the activities of the Office of Rights and Responsibilities, with statistics appended. The committee will review the report and consider whether it wishes to make any recommendations arising therefrom to the Rector. Such recommendations may include amendments to the Code.

The task force strongly recommends that the report and any recommendations from the Advisory Committee should be presented to a meeting of the Office of the Rector. The Director, Rights and Responsibilities, should be invited to attend the meeting to answer any questions or participate in discussion. If there are recommendations to amend the Code itself, they should be decided upon and forwarded to the Board of Governors for ratification within a reasonable delay.

The task force also recommends that the report should be published in *Concordia's Thursday Report*, and be circulated to members of Senate for their information.

#### **4.13. REVIEWING THE NEW STRUCTURES AND PROCEDURES**

Given the radical nature of the changes which we have proposed, we recommend that the Rector arrange for a timely review of the operations of the Office of Rights and Responsibilities, to occur not later than the end of the second year of operation. Thereafter, cyclical reviews, incorporating the use of an external consultant and reasonable consultation with constituent groups internally, should be held every five years.



## RECOMMENDATIONS : PART IV

1. That an Office of Rights and Responsibilities be created, replacing the Office of the Code of Conduct (Non-Academic) and the Sexual Harassment Office, the functions of which will be as described in Part IV of the present document.
2. That the positions of Code Administrator and Sexual Harassment Officer be abolished, their functions to be fulfilled through appointments to the new Office of Rights and Responsibilities.
3. That a Director, Rights and Responsibilities be appointed, with responsibility to:
  - Direct the Office of Rights and Responsibilities.
  - Advise and assist members of Concordia who are concerned about conduct which appears to violate the principles of the Code of Rights and Responsibilities.
  - Encourage the use of alternate forms of conflict resolution, and facilitate the resolution of complaints.
  - Receive complaints and, when necessary, carry them forward for resolution under the formal procedures of the Code.
  - Coordinate a community information and education programme about rights and responsibilities, in collaboration with constituent groups and interested parties.
  - Assist in training those with supervisory authority about ways to manage misconduct.
  - Assist in training student hearing board members.
  - Coordinate the University's response to situations involving disruption, threats or violence.
4. That the Code of Rights and Responsibilities specify the procedures for the resolution of complaints described in Part IV of the present report.
5. That the Advisory Committee on Rights and Responsibilities be created as outlined in Part IV of the present report.



## **PART V**

### **THE OMBUDS OFFICE**

#### **5.1. ROLE OF OMBUDS OFFICE**

The Ombuds Office has a valuable role to play in providing a confidential, neutral and independent avenue for the investigation of complaints about any aspect of the University's operations. Its institution-wide perception, its investigative function and its power to recommend both in individual cases and at the policy level, constitute a unique resource.

The mandate and practice of the Ombuds Office should ensure that it neither overlaps nor duplicates the role and function of other offices and procedures. It should act as a first resort in referring people to other sources of help or to the appropriate process to resolve whatever problem they may have, and it should act as a last resort when the usual channels have been exhausted without satisfaction or when no channel exists.

Given the distinctions we have drawn between the roles of the Ombuds Office and the proposed Office of Rights and Responsibilities, we recommend that the Ombuds Office be governed by a separate policy, based on Section II of the current Code of Conduct (Non-Academic) entitled *The Ombuds Office*.

#### **5.2. REPORTING STRUCTURES**

Both former Concordia Rectors have been very sensitive to the need for the Ombuds Office to operate independently. Notwithstanding the formal relationship, therefore, the ombudspersons have never "reported" in the usual sense and the organization charts express the connection by a dotted line. The Supervisory Board has been responsible for evaluating the work of the office and has dealt with the occasional complaint, while the Executive Assistants to the Rector, who have until recently always chaired the Supervisory Board, have been the link for matters covering the day to day administration of the office, budget, and so on.

This system has worked relatively well; however there are three points to make. First, there is a concern, maybe not widespread but voiced by some who have visited the Ombuds Office, that if the ombudspersons report to the Rector, the Rector must certainly exercise some control over their activities. Perhaps more worrisome is that this perception may actually dissuade some people from coming to the office at all. The second point, which flows from the first, is that the reporting structure creates the perception of a conflict of interest, if not an actual conflict, in the event a complaint is made against the Rector.

Third, the ombudspersons have expressed to the task force their view that while the reporting relationship presents the problems mentioned above, they would like more real contact with the Rector to discuss trends and issues that arise out of the Ombuds Office caseload. Independence can too easily turn into isolation. The task force agrees that there could be a salutary benefit if more opportunity were provided for dialogue between the ombudspersons and senior administrators, outside the context of specific complaints.

The task force therefore recommends that the Ombuds Office reports to the Board of Governors. (This is the case at other universities with similar ombuds office mandates.) The Board should appoint and evaluate the ombudspersons, arrange for the evaluation of the office, deal with any complaints that may be made about the operation of the office and review the Ombuds Office annual report. The role of the present Supervisory Board with regard to the Ombuds Office would therefore fall away.

### **5.3. IMPLEMENTATION OF RECOMMENDATIONS MADE BY OMBUDS OFFICE**

The Ombuds Office is required by its terms of reference to present an annual report "to the community." The report has traditionally been submitted to the Rector and the Chair of the Supervisory Board and published in *Concordia's Thursday Report*. The Supervisory Board is mandated to review it and authorized "to make any recommendations it judges appropriate to the Rector and the Board of Governors...." Various supervisory boards over the years have been uncomfortable with this role and unclear as to how it should translate into practical action. For several years there was no formal acknowledgement of the report and no official response to the recommendations contained in it; once the issue of the *Thursday Report* in which it is published was off the stands, it largely escaped attention.

We therefore recommend that the Office of the Rector meets with the ombudspersons following submission of their annual report to discuss the report and its recommendations and to determine how the recommendations will be followed up. In addition, we suggest that the Rector meets with the ombudspersons on at least a quarterly basis to discuss current issues.

### **5.4. ACCESS TO DOCUMENTS**

The current terms of reference of the Ombuds Office contain a statement (article 15) restricting access to documents "which cannot be released for reasons of confidentiality". The statement is unclear and can be confusing. At other universities with similar Ombuds Office mandates, the ombudspersons have no restrictions on access. Bearing in mind that the ombudspersons are bound to respect the confidentiality of information to which they are privy, the Concordia ombudspersons should have clear access to whatever documents and information are necessary for their work. (It is understood that medical and counselling records cannot be released without consent.)

### **5.5. STAFFING**

Since 1990, there have been two full-time and no part-time ombudspersons. We recommend that the new terms of reference be modified to reflect this reality (see article 14 of the Code of Conduct (Non-Academic))

#### **RECOMMENDATION : PART V**

**The task force recommends that new terms of reference be formulated for the Ombuds Office, contained in a separate policy and incorporating the changes detailed in Part V of this report.**

## **PART VI**

### **INFORMATION, EDUCATION AND TRAINING**

#### **6.1. PROVIDING INFORMATION**

It is apparent that all members, but especially students whose passage through the university is more transitory than that of most employees, need to be better informed about what the expected standards of conduct are, how these standards are enforced, and how and where they can get help or advice if they have a problem. The former Code Administrator told us that he believed that the Code of Conduct (Non-Academic) was the least-known policy of the University. A senior administrator who spoke to us was under the mistaken impression that the Code applied only to students. A faculty member who submitted information about disruption in the classroom suggested that students should be required to read and sign something about standards of behaviour at registration, since they did not appear to know what was expected of them. Few employees read the policy manuals or even know how to find them.

##### **6.1.1. A GUIDE TO THE CODE**

The first task to be achieved, therefore, is to produce a guide to the new Code, written in clear, everyday terms, which should be distributed to all staff, faculty and new students, on a systematic basis. It should contain chapters which expand on the statement of governing principles, providing explanations and examples of the kind of behaviour which is proscribed. With regard to the sections dealing with discriminatory conduct, the guidelines and definitions of the Quebec Human Rights Charter should be used. It should then proceed with clear instructions as to how a member of the university might seek recourse. The Director, Rights and Responsibilities should be responsible for producing this booklet, with input from the Advisory Committee and any other resources in the university which may be helpful, the contents to be thoroughly vetted by Legal Counsel.

##### **6.1.2. PAMPHLETS AND OTHER MATERIALS**

From time to time, the Office may also produce pamphlets on specific subjects, for example, harassment on the grounds of sex, sexual orientation or race, which may be directed towards members of the different constituent groups. The Sexual Harassment Office has already had some success in this regard. Other materials, such as posters, and display boards can also be effective. The University should in addition provide display cabinets throughout the University for the use of the Office of Rights and Responsibilities.

## **6.2. RAISING AWARENESS**

Over the past decade or so, Concordia has taken action in a variety of ways to promote the principle of equity throughout its operations. The establishment of the Office on the Status of Women, the Employment Equity Policy and the Sexual Harassment Policy are three of the more obvious ways in which we have tried to make the university more accessible to all. However, the issues are complex and often controversial, and the principles espoused often greeted with hostility and resistance. While we recognise that significant change is always accompanied by strain and conflict, we believe that these effects can be minimised if the ground is properly prepared. If university members are going to improve the way they behave towards each other, persuasion is probably more effective than coercion.

An example comes to mind. When the first woman was recruited for a professional trade position some 6 years ago, neither the male shop employees nor the incoming woman were prepared for the impact this would have on the climate in the shop in question. No-one sought the tradesmen's cooperation in thinking of ways to make the transition smoother. Much of the ensuing tension and conflict could have been avoided if an attempt had been made to explain the reasons for hiring women, to set standards of conduct, and to provide support for dealing with conflict.

There should be more opportunities provided for members of the university to discuss and debate questions of conduct, discrimination etc. The Office of Rights and Responsibilities should play a catalytic role in this endeavour, helping to bring together other groups or units on campus. First, we recommend that those offices which are concerned with equity issues (Office of Rights and Responsibilities, Office on the Status of Women, Employment Equity Officer, Ombuds Office, Student Advocacy Services, etc) should meet from time to time to identify issues, discuss educational strategies, and collaborate on projects. This group should seek input from community interest groups, such as the Faculty Women's Caucus or the Queer Collective or ethnic student associations. We do not propose to be too prescriptive here, but intend simply to suggest ways in which such activities can be enhanced and coordinated. Such a group could for example identify a speaker's list which faculty could tap for class presentations, or arrange professional development sessions, or workshops for specific target groups.

## **6.3. TRAINING OF THOSE WITH SUPERVISORY AUTHORITY**

### **6.3.1. ADMINISTRATORS LACK TRAINING**

The task force was told over and over again about the lack of, and need for, training in the area of human resource management. We gained the impression that, particularly in the case of academics who are appointed to administrative posts, criteria relating to such skills or experience are not formally considered in the search process, nor is any attempt made to prepare new administrators to clearly understand what is expected of them in this regard. They often do not fully understand the scope of their authority, they lack skills in managing conflict, and they are not given training in the use of proper procedures. Many do not understand the principles of natural justice or the meaning of confidentiality. Of special significance is a relative ignorance of the provisions of collective agreements and how they are applied. All these factors tend to paralyse action, or to send administrators running to Legal Counsel for management advice. While Counsel clearly has an important role to play

in providing a legal opinion as to the probable outcome of a certain decision, in interpreting collective agreements and in helping to phrase written directives, the University cannot and should not expect counsel to tell managers how to do their jobs.

### **6.3.2. TRAINING NEEDS MUST BE CAREFULLY ASSESSED**

While training is needed, the scope and content of training for different levels of management must be carefully assessed. We should not grab at quick and easy solutions. We understand, for example, that courses in conflict resolution have been held for some managers, although we do not know for which managers or precisely what is being taught. Such training can be useful. It can help to make managers aware of situations they might otherwise have overlooked, and give them some idea of what they can take care of themselves, and when they should seek help. Workshops in conflict resolution are not a panacea, however. They cannot turn all those with supervisory authority into instant experts. These kinds of skills take years to develop, and cannot be fully cultivated in people who may have neither the pre-disposition for them nor the inclination to use them. They also do not provide the knowledge of procedural matters which is essential if misconduct is to be managed effectively and fairly.

The same is true of the various courses in management skills currently being offered by the Training Department of Human Resources. While the department is to be commended on what it has achieved on a small budget, these courses offer voluntary professional development, and do not replace basic mandatory training. An example of the kind of training which we believe to be essential is Human Resource's recent effort to introduce managers to the application of the new CUSSU agreement. This should be standard practice for all collective agreements, particularly for senior administrators coming from other universities where there is limited unionisation.

Clearly, some applicants for management positions, whether internal or external, will already have accumulated considerable knowledge and skill. At Concordia, deans and vice-rectors have sometimes learned the hard way, by making mistakes. Not all mistakes are instructive, however: they may induce a great reluctance to act in like situations, the administrator having once been burned. Concordia needs to develop ways to assess what is needed in each case, but when training is needed, it should be obligatory.

The above having been said, the task force endorses the view of John Scott Cowan that "It is facile to say that training gives managerial courage. It manifestly does not. Lack of training, however, prevents it, and guarantees that its exercise is flawed." We recommend in particular that Concordia consider Dr. Cowan's advice on the selection and training of administrators, as expressed in the first recommendation of his report (page 32).

### **6.3.3. THE POSITION OF ACADEMIC DEPARTMENT CHAIRS**

The chairs of academic departments face particular dilemmas. They are, as is proper, academic administrators, which is already an onerous task. However, they are also, whether this is acknowledged or not, required to act to some degree as human resource managers and to deal with the problems of students in their department. This is especially problematic with regard to their colleagues. For chairs are precisely that, colleagues in the same bargaining unit, and this limits their authority. On the other hand, deans cannot be



expected to handle every little dispute between faculty members or every student complaint about an instructor. Nor can they correct every breach of civility or deal with every incident of disruption.

Further, department chairs are de facto the supervisors of support staff in all departments where there is no office manager. But the role is not sufficiently explicit, and chairs are inadequately prepared to handle this task. It is not surprising, therefore, that the Ombuds Office and the Sexual Harassment Office report that a disproportionate number of complaints from support staff about workplace conflict originate in academic departments. Support staff tend to get caught in the cross-currents of departmental disputes and politics. To add to their stresses, students often look to them for support when it is not forthcoming from faculty or the chair. Sometimes, and this is more sinister, they may be used as a kind of buffer between a chair or faculty members and an individual who is being disruptive.

The task force attempted to obtain a "job description" for chairs. One was furnished by the Faculty of Fine Arts which was identical with another obtained from Commerce, the latter marked as being part of a "Faculty Manual" dated 1978. This document states that the chair is responsible to the dean for, among other things, the administrative operation of the department. Does this include human resource management? It then goes on to list the responsibilities for "academic personnel administration", which include appointments, promotion, the assignment of teaching loads, etc. Support staff are not mentioned. But if the chair is not in charge, who is? The task force suggests that it is time to review these "job descriptions" and to clarify the managerial responsibilities of the chair with regard to both faculty and staff.

We also investigated what training, if any, was offered to new chairs. It would appear that sessions on topics of interest are provided by the Chair's Caucus, but that these vary from year to year and do not include obligatory basic training. We note further that item (2) of the Caucus objectives for its steering committee reads "authority to manage human and financial resources in keeping with responsibilities of chairs." We are not entirely sure what this means, but we hope that it is a sign that the caucus is concerned about all human resource issues, not only those with academic relevance. We recommend strongly that the situation of department chairs be clarified and an assessment made of the kinds of training and support they need in order to fulfil their human resource management functions. Finally, we would like to point out that the observations in this section apply equally to the directors of academic programmes which are not grounded in a single department, and, to some extent, to the directors of graduate programmes.

#### **6.3.4.           ROLE OF OFFICE OF RIGHTS AND RESPONSIBILITIES IN TRAINING**

The Office should have a role to play in preparing those with supervisory authority to manage conduct problems. If the proposed Code is enacted, its structures and mechanisms will have to be explained in detail to all relevant parties on an ongoing basis. Further, as we have suggested in section 4.9.4., we recommend that the Office be mandated to develop a manual on general procedures for the guidance of all managers.



## RECOMMENDATIONS : PART VI

1. That adequate funds be provided in the budget of the Office of Rights and Responsibilities to provide for the production and annual distribution of a handbook explaining the operation of the Code of Rights and Responsibilities.
2. That adequate funds and amenities be provided for the Office of Rights and Responsibilities to develop materials and programmes to inform and educate the community.
3. That the University moves rapidly to assess the needs of those with supervisory authority for training in the management of misconduct, and that standards and programmes be implemented within a minimum delay.
4. That the University clarifies the responsibilities of academic department chairs and programme directors with regard to human resource management, and identifies and implements appropriate training for this function.
5. That the Office of Rights and Responsibilities be mandated to develop a manual on fairness and proper procedure for managers, and to provide training to the community in the application of the new Code of Rights and Responsibilities.

## POSTSCRIPT

The task force is mindful of the fact that it will ultimately have no control over whether or how its recommendations are implemented. Accordingly, we would like to make two points. First, most of the changes recommended have been conceived as parts of a whole which has its own rationale and integrity. If too many elements are altered, the viability of the whole may be jeopardised. Second, if these recommendations are accepted, a new Code will have to be written. The task force suggests that some link be maintained between itself and those who will be mandated to draft the new policy, in order to ensure that the spirit of our intentions is reflected in the final product.

# SUMMARY OF RECOMMENDATIONS

## PART III : RATIONALIZING POLICIES

1. That the Code of Conduct (Non-Academic) and the Sexual Harassment Policy be merged into a single policy to be known as the Code of Rights and Responsibilities, which sets broad standards of conduct applicable to all members of the University.
2. That the definition of proscribed behaviour in the new Code should be based on the statement of the existing Code of Conduct (Non-Academic) but that it be amended to include the following: harassment on the grounds of sex, sexual orientation and race or ethnicity, and behaviour which is disruptive, threatening or violent.
3. That the new Code should emphasise the responsibility of all members of the University to respect the rights of others and that it clearly spells out the right and duty of those in a position of supervisory authority to act effectively to uphold the desired standards of conduct.
4. That the university move systematically to ratify the new Code at the bargaining table with each of its unions. Ideally, ratification would be achieved by having the Code recognised in, or appended to, collective agreements.

## PART IV : STRUCTURES AND MECHANISMS

1. That an Office of Rights and Responsibilities be created, replacing the Office of the Code of Conduct (Non-Academic) and the Sexual Harassment Office, the functions of which will be as described in Part IV of the present document.
2. That the positions of Code Administrator and Sexual Harassment Officer be abolished, their functions to be fulfilled through appointments to the new Office of Rights and Responsibilities.
3. That a Director, Rights and Responsibilities be appointed, with responsibility to:
  - Direct the Office of Rights and Responsibilities.
  - Advise and assist members of Concordia who are concerned about conduct which appears to violate the principles of the Code of Rights and Responsibilities.
  - Encourage the use of alternate forms of conflict resolution, and facilitate the resolution of complaints.
  - Receive complaints and, when necessary, carry them forward for resolution under the formal procedures of the Code.

- Coordinate a community information and education programme about rights and responsibilities, in collaboration with constituent groups and interested parties.
  - Assist in training those with supervisory authority about ways to manage misconduct.
  - Assist in training student hearing board members.
  - Coordinate the University's response to situations involving disruption, threats or violence.
4. That the Code of Rights and Responsibilities specify the procedures for the resolution of complaints described in Part IV of the present report.
  5. That the Advisory Committee on Rights and Responsibilities be created as outlined in Part IV of the present report.

## **PART V : THE OMBUDS OFFICE**

The task force recommends that new terms of reference be formulated for the Ombuds Office, contained in a separate policy and incorporating the changes detailed in Part V of this report.

## **PART VI : INFORMATION, EDUCATION AND TRAINING**

1. That adequate funds be provided in the budget of the Office of Rights and Responsibilities to provide for the production and annual distribution of a handbook explaining the operation of the Code of Rights and Responsibilities.
2. That adequate funds and amenities be provided for the Office of Rights and Responsibilities to develop materials and programmes to inform and educate the community.
3. That the University moves rapidly to assess the needs of those with supervisory authority for training in the management of misconduct, and that standards and programmes be implemented within a minimum delay.
4. That the University clarifies the responsibilities of academic department chairs and programme directors with regard to human resource management, and identifies and implements appropriate training for this function.
5. That the Office of Rights and Responsibilities be mandated to develop a manual on fairness and proper procedure for managers, and to provide training to the community in the application of the new Code of Rights and Responsibilities.

## APPENDIX 1

### Concordia University

#### Task Force to Review Policies Pertaining to Rights, Responsibilities and Behaviour

#### Mandate

The Task Force will, in the first instance, review and evaluate all existing University codes and policies pertaining to rights, responsibilities/ behaviour and identify overlapping, duplication of efforts, dysfunctional areas and lacunae.

Based on this evaluation, the Task Force may formulate general recommendations with respect to the overall handling of conflicts in the University and will formulate specific recommendations intended to clarify and harmonize existing policies. In addition, the Task Force will formulate recommendations with respect to the role of the Code Administrator, the Sexual Harassment Officer and the Ombudspersons.

The Task force may solicit specific written submissions and shall receive written submissions from interested persons.

The Task Force will be assisted in its work by Me Bram Freedman as a resource person. It will submit its report to the Secretary-General, Vice-Rector Services, the Supervisory Board, Code of Conduct (Non-Academic) and the Advisory Committee on Sexual Harassment, no later than April 30, 1994.

Finalized  
October 28, 1993

## APPENDIX 2

### SCOPE OF INQUIRY

1. What is currently in place?
  - Code of Conduct (Non-academic)
  - Sexual Harassment Policy
  - Interim Policy on Temporary Suspension
  - Policy on use of space (SR-1, articles 7-9)
  - Employee policy B-13 & 14 - discipline and grievance procedures
  - Emergency procedure manual - protocol for dealing with threats and civil disturbances
  - Security policy (SE-1), esp. articles 1.9 and 1.14
  - Guidelines for HIV/AIDS-related concerns - RE-3 - general guidelines
2. Related initiatives being conducted concurrently
  - Proposed University Code of Ethics
  - Administrative review re: Fabrikant Case
  - Arthurs Inquiry (Academic Integrity: Fabrikant case)
  - Proposed Student Bill of Rights
3. Collective Agreement
  - With the exception of management and professional staff, all employees are unionized or becoming so. The results of the professional staff certification vote will be known shortly. Trend towards harassment/sexual harassment clauses with non-teaching staff, a movement not being paralleled in teaching staff agreements.
4. Task Force reports to consult for possible recommendations on discrimination/harassment
  - Multicultural report
  - Gay and Lesbian Task Force
5. Available reports to be consulted
  - Material on work and draft policy of UIT
  - Sexual Harassment Annual Reports
  - Code of Conduct Annual Reports
6. Units providing direct services/intervention re behaviour
  - Health Services
  - Ombuds Office
  - Counselling and Development
  - Code of Conduct Administration
  - Sexual Harassment Office
  - Security
  - Human Resources



## **APPENDIX 3**

### **Task Force to Review Policies Pertaining to Rights, Responsibilities and Behaviour**

November 8, 1993

#### To all members of the Concordia Community

The above-named task force has been appointed by the Secretary General and the Vice-Rector Services to accomplish the following mandate:

"The Task Force will, in the first instance, review and evaluate all existing University codes and policies pertaining to rights, responsibilities and behaviour and identify overlapping, duplication of efforts, dysfunctional areas and lacunae.

Based on this evaluation, the Task Force may formulate general recommendations with respect to the overall handling of conflicts in the University and will formulate specific recommendations intended to clarify and harmonize existing policies. In addition, the Task Force will formulate recommendations with respect to the role of the Code Administrator, the Sexual Harassment Officer and the Ombudspersons."

This is a weighty and important task which can only be accomplished in a spirit of openness and cooperation with the entire University community. We wish to invite all interested parties to contribute any information, opinion or suggestion which might be pertinent to our task.

It will be necessary for us to review a wide range of policies and procedures, most notably the Code of Conduct (non-academic) and the Sexual Harassment Policy. One of the most important tasks will be to consider the compatibility of such policies with each other and with the various collective agreements in force. In addition, we will endeavour to remedy the current lack of policies or protocols dealing with disruptive, threatening or violent behaviour. We would welcome testimony about any personal experiences relating to these concerns which may help us to identify problems and suggest solutions.

We will accept both written submissions and oral presentations, from individuals or groups. Any need for confidentiality will be respected. Those parties wishing to make an oral presentation should contact us no later than December 10, 1993 to schedule appointments for January 1994. For further information, or to schedule an oral presentation, please contact the Chair, Sally Spilhaus, at 848-4857. Written submissions, which should be received no later than January 31, should be addressed to the Chair of the Task Force on Rights, Responsibilities and Behaviour, at S-K-110.

## APPENDIX 4

### Schedule of interviews and presentations:

|          |  |
|----------|--|
| 22/11/93 | Mr. John Relton, former Code Administrator   |
| 29/11/93 | Dr. June Chaikelson, president of CUFA   |
| 06/12/93 | Members of the former University Intervention Team<br>(Suzanne Belson, Beatrice Pearson, John Relton, Nancy Torbit)  |
| 14/12/93 | Dr. Martin Kusy, Dean, School of Graduate Studies<br>Dr. Robert Parker, Dean, Faculty of Fine Arts<br>Dr. Christopher Ross, Dean, Faculty of Commerce and<br>Administration<br>Dr. Donat Taddeo, Dean, Faculty of Engineering and Computer Science<br>Dr. Gail Valaskakis, Dean, Faculty of Arts and Science |
| 20/12/93 | Ms. Susan O'Reilly, Director, Human Resources<br><br>Dr. Donald Boisvert, Associate Vice-Rector, Services (Student Life)   |
| 17/01/94 | Ms. Ann Kerby, Director, Advocacy and Support Services<br><br>Ms. Susan Magor, Director, Environmental Health and Safety and Nicole<br>Saltiel, Prevention/Compensation Coordinator, Environmental Health and<br>Safety  |
| 25/01/94 | Dr. Rose Sheinen, Vice-Rector, Academic  |
| 31/01/94 | Dr. Patrick Kenniff, Rector and Vice-Chancellor<br><br>Ms. Ritva Seppanen, Lecturer/Coordinator, English Composition, English<br>Dept.   |
| 07/02/94 | Ms. Suzanne Belson, Ombudsperson<br><br>Ms. Marie-Andrée Robitaille, Interim Code Administrator  |
| 14/02/94 | Ms. Sally Spilhaus, Sexual Harassment Officer<br><br>Mr. Phillip Dalton, Co-president, CUSA<br>Ms. Lana Grimes, Co-president, CUSA<br>Mr. Ramy Sedra, President of CASA<br>Mr. Stanley Yee, President of ECA   |

## APPENDIX 5

### SOURCES CONSULTED

#### Academic freedom

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Samples of harassment clauses in faculty agreements from the following universities:

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Disruptive behaviour, violence in the workplace and conflict resolution

Amada, Gerald. Coping with the disruptive student: a practical model. Asheville, NC: College Administration Publications, Inc., 1994

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Concordia University Intervention Team. A Guide for Working with Emotionally Distressed Individuals. Montreal, October 1989.

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Harassment Policy of the Canadian Broadcasting Corporation (Human Resources Policy No. 717). November 1990.

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#### Personnel management in universities

"Politique de gestion des personnels de l'UQAM". Projet du Vice-rectorat aux ressources humaines, Service du personnel non enseignant. Université du Québec à Montréal, le 4 mai 1992.

#### The Ontario Ministry of Education and "zero tolerance"

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"Framework regarding prevention of harassment and discrimination in Ontario universities". Policy framework issued by the Ontario Ministry of Education and Training. Toronto: October 7, 1993.

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## "Consensual relations" between students and professors

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Codes and information related to the use of codes from the following universities were examined:

University of Minnesota, Bowling Green State University, University of Louisville, Aeronautical University, Texas A & M University, Cornell University, McGill University, Santa Clara University, University of Calgary, Ryerson Polytechnical Institute, Northern Illinois University

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Stoner, Edward N. II et al. Harnessing the "Spirit of insubordination" : a model student disciplinary code". The Journal of College and University Law, Volume 17, no. 2 (Fall, 1990)

## University policies on sexual harassment, harassment and human rights

Policies, pamphlets and other documents relating to the implementation of policies from the following universities were examined. Files containing these documents may be consulted in the office of the task force chair.

Laurentian University, University of Victoria, University of Guelph, Université de Montréal, Université de Sherbrooke McGill University, McMaster University, Memorial University, The University of Western Ontario, Ryerson Polytechnical Institute, Carleton University, Simon Fraser University Dalhousie University, University of Guelph, The University of Lethbridge, Queen's University, Université Laval, University of Toronto.

## **APPENDIX 6**

### **CONCORDIA UNIVERSITY**

#### **THE CO-ORDINATION OF URGENT CASES OF DISRUPTION, THREAT AND VIOLENCE**

#### **INTERIM PROTOCOL**

**Submitted by the Task Force to Review Policies  
Relating to Rights, Responsibilities and Behaviour**

### **INTRODUCTION**

The Task Force to Review Policies Pertaining to Rights, Responsibilities and Behaviour was set up in October 1993 by the Secretary-General and the Vice-Rector, Services. Part of its mandate was to make recommendations with regard to the management of disruptive, threatening and violent behaviour at Concordia. Under normal circumstances, it would have taken many months before any of its recommendations could have been implemented.

Very soon after the Task Force began its work, it became evident that Concordia could not afford this delay. Difficulties encountered in handling the recent assault of an employee in a women's washroom at Loyola once again demonstrated the urgent need for interim measures to co-ordinate the effective management of cases of this kind. Consequently, the Secretary-General and the Vice-Rector Services asked the Task Force to propose an interim model which could be implemented as soon as possible in the new year. The Task Force will thereafter be responsible for monitoring the implementation of the interim model, with a view to refining or modifying it, and to making recommendations as to how it might be integrated into permanent structures.

### **INTERIM MODEL**

The protocol and supporting structures described below constitute the model which we recommend. Its major weakness is that it is embedded in the existing unsatisfactory system of policies and procedures pertaining at Concordia. Its strength is that, as a protocol (rather than a policy), it may be amended as often as practical experience would suggest. Its temporary nature should not, however, obscure the fact that it is grounded in what we consider to be some important principles of practice:

- First, incidents of serious disruption, threat or violence are rarely single-issue, single-answer phenomena. They generally have a broad impact across the University, and require a variety of interventions. To address this fact, the Task Force sought ways to ensure that case management is effective and well co-ordinated and not jeopardized by fragmented and disjointed sectorial action. The proposed model

- a) provides for a co-ordinator with the authority and autonomy to organize an effective response to incidents and cases, and
  - b) ensures that senior administrators are kept appropriately informed of developments in every case.
- Second, the protocol is designed to ensure that the responsibility for decision-making is vested in the hands of management. At the same time, it builds in special support and expertise for managers who may find themselves in unfamiliar territory in a crisis situation.
  - Third, the protocol ensures that all decision-making is closely co-ordinated, and that information about developments is appropriately channelled.
  - Last, the protocol builds in a reporting and review process which ensures both accountability and the ongoing refinement of case management strategies.

## SCOPE OF THE PROTOCOL

Given the time available, the Task Force did not attempt to develop a complete definition of the kind of behaviour or situation which is to be addressed by the protocol, deciding instead to rely on the sober judgement of the interim case management team. Nevertheless, we did set some parameters. The protocol is *not* designed to deal with matters which can be resolved through simple advice and existing conflict resolution mechanisms or the filing of a formal grievance or an individual complaint. Such matters would be referred to existing resources such as the Code Administrator, the Ombuds Office, the Sexual Harassment Officer, Human Resources, etc. It is also *not* intended to cover emergencies, such as fire or chemical spills, which are handled by Environmental Health and Safety.

## CASE MANAGEMENT - A STRUCTURED APPROACH

The model proposes the appointment of a co-ordinator (seconded on a part-time, as-needed basis) and a team approach to case management.

### 1. The co-ordinator

The co-ordinator's role is one of organization and facilitation rather than decision-making. The co-ordinator must be invested with the necessary authority to convene meetings, manage internal communications, maintain records and follow-up on decisions. Regardless of the incumbent's

position in the University, with regard to this function, he/she should report to the Rector. The primary responsibilities of the co-ordinator are:

- to bring together the authorities who must make decisions, together with experts where necessary, to manage the case
- to centralize internal communications
- to ensure that the victim(s), if any, and the members of the community who are affected by the incident are supported, consulted where appropriate and kept informed of developments in the case
- to ensure follow-up of decisions
- to maintain case records, and to ensure that the appropriate senior authorities are informed of developments
- to convene de-briefing sessions, and ensure that any "lessons learned" are integrated into protocols and procedures, and conveyed to the appropriate authorities

## 2. The case management team

### 2.1. The Core Team:

To ensure that the team develops coherence, consistency and expertise, it is recommended that a core group be established composed of the co-ordinator (ex-officio) and representatives from the departments most likely to be involved in the majority of cases, namely, Security and Health Services. These departments should be asked to make fixed appointments to the team, and also to name alternates who should receive some minimal training. In the event that the co-ordinator is unavailable, either the Security or the Health Services member should act as alternate. These two members must become familiar with, and have easy access to, the co-ordinator's records of cases.

In addition to these permanent members, the core team for each case should include the authorities responsible for the department(s) or unit(s) concerned. These will vary depending upon the circumstances of each case, but would typically include two levels of authority, for example, a supervisor and a department director, or an academic department chair and a dean.

### 2.2. Extended team as needed:

In addition to the core group, others who have a direct responsibility for an aspect of the

case, or whose expertise is required, may be either added to the team or consulted as needed, for example:

- Legal Counsel
- A representative of Public Relations
- A representative of Environmental Health and Safety
- The Code Administrator
- An Ombudsperson
- The Sexual Harassment Officer
- The Dean of Students
- A member of Counselling & Development
- A member of Campus Ministry
- The managers of other departments where the incident has had a serious impact upon department members
- A representative of Human Resources
- Union representatives
- A psychiatrist
- A police liaison officer,
- An expert on critical incident stress de-briefing, etc.

### 2.3. Importance of attendance at case conferences:

People asked to participate as members of either the core or an extended team need to be informed that such requests should be given the highest priority.

## 3. Decision to implement the protocol

The co-ordinator may receive a report of disruption, threat or violence directly from the person(s) implicated in the incident, or via a third party who has become aware of the situation, for example, a supervisor, the Dean of Students, the Ombuds Office, etc. The co-ordinator will obtain as much information as is necessary to make a preliminary assessment of the situation. In cases where action by the team is clearly not required, the co-ordinator will refer the matter elsewhere as appropriate. In all other cases, the co-ordinator will confer rapidly with the other core team members to decide whether or not to implement the protocol.

## 4. The Protocol

### 4.1. Case conference:

The co-ordinator immediately convenes a case conference of the core group plus any others whose presence is relevant

#### 4.2. Required action:

The case conference will carry out some or all of the following, in whatever order is appropriate and depending on the nature of the situation:

- start a case log detailing facts and recording all decisions
- determine the facts of the situation
- arrange for external and internal communiqués (Internally, the principle to follow is to ensure that the community at large and/or those most directly affected are given appropriate information about the facts, the action being taken, and how to get help if they are affected by the incident.)
- arrange for medical/psychological follow-up for victim(s)
- determine any immediate action to be taken with regard to any perpetrator
- ensure that the victim's employment or student status is not in jeopardy, and make necessary arrangements
- arrange for critical incident stress de-briefing sessions for students/employees who may be affected, as needed.
- start CSST reporting process as appropriate
- establish communication links for specific aspects of the case
- brief those implicated on how to handle the media
- determine whether further expert advice is needed, eg. psychiatric, de-briefing experts, legal opinions

#### 4.3. Follow-up:

The team thereafter plans any further meetings and establishes responsibility among team members for the follow-up of decisions.

### 5. Records

#### 5.1. Case records:

The co-ordinator will maintain a case log containing the facts of the case and a record of all decisions and action taken. The co-ordinator will also keep copies of pertinent documents associated with the case (copies of Security reports, correspondence, etc.) These documents will constitute the case file, to be maintained in the office of the co-ordinator.



## 5.2. Computerization:

It is recommended that the case file system be computerised, which will greatly facilitate the management of case communications as well as provide a permanent data base which will be useful for statistical purposes and identifying repeat incidents.

## 5.3. Confidentiality:

During the course of a case, team members and consultants will maintain confidentiality with regard to nominative information. Information will be divulged on a need-to-know basis.

## 6. Team de-briefing

The term de-briefing is used here in two ways.

### 6.1. During the course of a case:

During the course of a particularly long or difficult case, the team is responsible for the ongoing assessment of its own performance. This helps to promote mutual support, identify shaky strategies and keep decision-making on track.

### 6.2. At the conclusion of a case:

A final meeting will be held at the conclusion of a case, in order to identify any "lessons learned" and to ensure that participants receive any help they might need to handle the stress or emotional impact of the case.

## 7. Reporting

Upon conclusion of a case, the co-ordinator will write a report summarizing the case and submit it to the Rector, the Vice-Rectors and the Secretary-General. Interim reports should be submitted in a timely fashion if the case escalates to serious levels or is long drawn-out. Copies of the report should be sent to participating team members. The report should include any observations emanating from the de-briefing session and any recommendations for review or changes to policy or practice which the team wishes to make. These reports are the key to ensuring accountability in decision-making, consistency of response across sectorial lines and the timely review of all policies and procedures regarding behaviour. We recommend that all case reports be reviewed at the Office of the Rector.

8. Profile of co-ordinator

It is essential that the co-ordinator should have appropriate skills, maturity, and the ability to command the necessary respect to co-ordinate action in a crisis situation. This includes excellent skills in communication (English and French), interpersonal relations and organization, as well as experience in working with situations involving disruption, threat or violence. The co-ordinator should have a good knowledge of University structures and personnel.

9. Recommended resources

The work of the permanent core team will require support in the form of release time or a stipend. Clerical support may be needed in some circumstances.

The co-ordinator should be provided with a computer which is located so as to allow for the storage of confidential data and which can also be made accessible to the co-ordinator's alternates. Ideally, the co-ordinator should also have the use of a laptop or notebook-type machine which can be transported to case conferences or an operations centre. Priority access to appropriate space for case conferences or operations centres should be assured.

Task Force to Review Policies Pertaining to  
Rights, Responsibilities and Behaviour

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